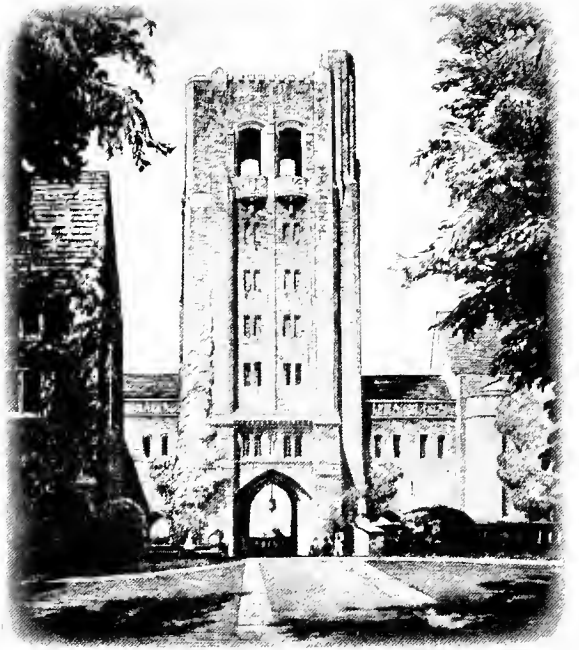

LAWYER AND CLIENT;

OR, THE

TRIALS AND TRIUMPHS OF THE BAR.

ILLUSTRATED BY

SCENES IN THE COURT-ROOM,
ETC., ETC.

BY

L. B. PROCTOR,

AUTHOR OF

"THE BENCH AND BAR," "LIVES OF THE NEW YORK CHANCELLORS," "EMINENT LAWYERS AND STATESMEN," ETC.

SECOND EDITION.

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INTRODUCTION

TO THE

SECOND EDITION.

THE warm welcome which the first edition of this work received from the profession, the press and the general public, has necessitated the publication of another, although little more than eight months have elapsed since the appearance of the first. The success of the work is attributable, in a large degree, to the general awakening in the legal profession to the advantages of a more thorough cultivation of literature, especially legal literature. It is now fully understood that to complete a lawyer's education something more is needed than a mere formal knowledge of law, acquaintance with abstract precedent, or the procedure of the code and the courts; that these reduce the practitioners to legal artisans, substituting for legal principles mere empiricism, discouraging the

acquirement of a scientific, liberal and philosophic knowledge of the law.

It was said by Burke, that "all professions, followed by intense application, tend to narrow the intellect." There are men who think that assumed gravity, dulness and intellectual torpidity are evidences of profundity, the outcome of deep meditation and ratiocination; that brilliancy indicates want of erudition, and is superficial. But a little thought convinces us that gold is none the less valuable for being wrought into elegant forms and richly embossed; that the solidity of a building is not destroyed by adding beauty and ornament to it; that the strength of a man's understanding is not to be estimated in proportion to his want of imagination, his literary taste or poetic fervor. Hence the poet has justly said:

> "How charming is divine philosophy,
> Not harsh and crabbed, as dull fools suppose,
> But musical as Apollo's lute."

The cultivation of an elegant and refined literary taste produces the same effect upon the mental structure as does that architecture which at once strengthens and embellishes an edifice. Who has not seen the driest matter-of-fact, the most obtuse question of law enlivened, enforced and pointed, by some apt illustra-

tion, or by some pleasing literary quotation? Who has not seen a speaker at the bar, while adapting himself to the strictest rules of logic and legal oratory, evince the richness of his intellect and of a chaste literary taste by adorning the coldest theme with a diamond, a rich pearl of thought?

It was in part the literary elegance of Chancellor Kent's mind that prompted an illustrious English statesman to say: "As proudly as Phidias's statue of Minerva presented in her open palm, to the Athenians, the figure of Pericles, so does the genius of the State of New York present that of her Kent to the world."

It was the literary taste of Webster, Choate, Wirt, Seward, Brady and Hoffman that rendered them, and many others, intellectual giants and legal gladiators.

The author has endeavored to render his work appropriate to that legal literature which has become, as we have said, so important to the profession, and at the same time to render it acceptable to the taste of the general public. He has endeavored to exhibit the effect of a varied intellectual training to lawyers, by portraying its advantages to the actual relation between lawyer and client, especially to that part of practice confined to the struggles of the court-room.

One of the sources of his encouragement, and which causes him to believe he has succeeded, is the

numerous congratulatory letters he has received from the most distinguished legists and litterateurs, to whose decision the profession and the public unhesitatingly defer, and whose candor is equal to that erudition which renders them so distinguished and so highly esteemed. L. B. P.

Brooklyn, August 2d, 1883.

INTRODUCTION.

It was truthfully said by a great British lawyer and statesman, that "there is no section of the world's hopes and struggles which is so replete with so much animation of contest—such frequent recurrence of triumphant results and depressing defeats as the practice of law before juries—the grotesque and passionate forms of many-colored life with which the lawyer becomes familiar; the truth, stranger than fiction, of which he is the depository; the multitude of human affections and fortunes of which he becomes, in turn, not only the representative but the sharer.

"At one time the honor of a man's life may tremble in his hands, then he may be the last prop of sinking hope to the guilty, or the sole refuge clasped by the innocent, or be called upon to rebuke oppression, cruelty, fraud and deceit."

The court-room is a stern, often a terrible reminder that all the world is a stage, where suspense in its most

terrible form is found—where scenes that touch the heart and open the fount of sympathy are daily enacted.

To many, it is the stepping-stone to the scaffold, To many, the verge of a felon's prison. To others, it is the loss of all they possess in the world. Their reputation departs forever—the lawyer represents all interests here—he and his client are one.

There are occasions when the bar, for a brief period, is something like a comedy, when ripples of merriment run over Bench, Bar, jurors and auditors, and witticisms go forth to the world never to be forgotten, that enliven and amuse all classes of society.

Therefore, all persons are more or less interested in the business which is done in courts of justice.

The following work is designed to exhibit to readers the lights, shadows, scenes and events of the court-room, which so largely and deeply affect society.

The incidents and scenes here portrayed are real, many of them historic scenes that cannot fail to impart instruction and arouse emotions of sorrow, sympathy and merriment in the heart of the reader.

L. B. P.

Dansville, N. Y., August, 1882.

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AARON BURR AND ALEXANDER HAMILTON.

Aaron Burr and Alexander Hamilton in the Court-room—The Trial for Murder—The Perjured Witness—How he was Caught by Burr—A Thrilling Scene—Theodosia and her Father—Burr Shooting at a Target.

In the Autumn of the year 1818, a court held its sittings at Utica, N. Y., which was largely attended by legal gentlemen from various parts of the State. As the second day of the term was drawing to a close, a gentleman, whose appearance indicated that he had just arrived in town, entered the court-room, and, walking directly to the bar, seated himself among the lawyers. There was something in his appearance that attracted attention. The most casual observer could not fail to detect in his bearing a natural ease, an undefinable superiority which so silently, yet truthfully, evinces familiarity with refined society. He had apparently numbered fifty years, and yet time had "lightly pressed its signet seal" upon him, for much of the

vivacity of youth still lingered on his visage. His hair had began to turn gray, and at the side of his head was slightly bushy, but worn back from his face and temples left his broad, high forehead quite bare, giving a classic cast to his features. His cheek was pale and thin, his brow thoughtful and tinged with the shadow of care, perhaps of sorrow, while his black, brilliant and singularly fascinating eye lighted up and animated a face which once seen could never be forgotten. He was below the ordinary stature, and his frame was somewhat slender, though well knit and fair proportioned. Finally, the *tout ensemble* was that of a gentleman—a man of intellect, acquainted with the world, with men, and, withal, a penetrating judge of character.

As he entered the bar, Martin Van Buren was in the act of closing an argument that had occupied the attention of the court several hours. Turning to take his seat, he recognized the stranger who was near him.

"Colonel Burr!" said Van Buren, in a low voice, extending his hand, "I am very glad to see you. Our cause was reached this morning, but as I could not think of defaulting you in your absence, which I believed to be unavoidable, I exchanged our case with the one just submitted. I hope, Colonel, you are well."

"Quite well, I thank you. I am obliged to you for your courtesy. I did not leave New York quite as soon as I expected, and it is a long way here. Madam Justice is getting mercurial, I fancy, since she is establishing her temples so far in the interior of the State. But I suppose our case is the next one to be tried."

"No, Colonel, I am sorry to say that there is a preferred cause of some kind that is to be disposed of next."

At this period in the conversation, the voice of the crier announced the adjournment of court until the next morning, and the two lawyers left the court-house together.

The reader is already aware that the stranger who has been described was Aaron Burr—a name conspicuous in American history. His fall from greatness—his pecuniary misfortunes—had compelled him to resume the practice of a profession in which he had few, if any, rivals, and which had been to him a stepping-stone to the highest honors.

He was at Utica on this occasion, as the opponent of Martin Van Buren in one of those great ejectment suits, which, in the early history of the State, occupied so much of the attention of its courts. Van Buren, at this time, was one of the ablest lawyers at the bar—a state senator and a politician of rare political abilities, skilled in the art of managing the inclination and prejudices of the people, wielding an influence which rendered him a powerful, if not successful, rival of De Witt Clinton.

Col. Burr was at this time unknown in the politics of the State and nation, though he had occupied a seat in the Senate of the United States; had contended with Jefferson for the presidential chair of the nation, missing the great prize by one vote, and winning the Vice-Presidency with little opposition. He was now merely the lawyer. A few years after his admission to the bar, he removed from Albany to New York city, where he became a successful, though friendly, rival of Alexander Hamilton. It has been said that each of these great men had a high, if not an exalted opinion

of the other's talents. "To the strength and facility of Hamilton's imagination, his fine rhetorical powers, —his occasional flashes of poetical genius, his acute reasoning powers, and the force of his declamation, Burr paid the tribute of admiration. The latter valued himself little upon his oratorical powers. His pleadings at the bar were more in the style of conversation than oratory—the conversation of an enlightened, well-educated, thoroughly-disciplined lawyer. In replying to Hamilton's splendid legal speeches, he would select the vulnerable, yet vital points, and quietly demolish them, leaving all the other parts untouched. In a twenty-minute speech he has been known to completely neutralize the effect of one of Hamilton's long, elaborate and ornate addresses."

Hamilton and Burr were occasionally associated in the trial of a cause. On such occasions they were almost irresistible. It is related that, on one occasion, they were retained to defend a man indicted for murder, and who was generally believed to be guilty, though the circumstances under which the crime was committed rendered it a deeply interesting case of circumstantial evidence. During the progress of the trial, as the circumstances were developed, suspicion began to attach to the principal witness against the prisoner. Burr and Hamilton brought all their skill in cross examination to bear on the witness, in the hope of dragging out of him his dreadful secret. But with singular sagacity and coolness he eluded their efforts, though they succeeded in darkening the shadows of suspicion that fell upon him, and strengthening their convictions of their client's innocence.

Before the cross examination of the witness was concluded, court adjourned for tea.

"I believe our client is not guilty, and I have no doubt that Brigham, that cunning witness, is really the guilty man, but he is so shrewd, cool, and deep, that I am fearful his testimony will hang poor Blair, our client, in spite of all we can do," said Hamilton to Burr, while on their way from the court-house to their hotel.

"I agree with you; Blair is not guilty and that Brigham is, and I believe we can catch him. I have a plan that will detect him, if I am not wonderfully mistaken," said Burr. He then proceeded to explain to his associate the nature of his plan.

"You may succeed," said Hamilton, after listening to the plan. "It's worth trying, at any rate, though you have a man of iron to deal with."

After tea, Burr ordered the sheriff to provide an extra number of lights for the evening session, and to arrange them so that their rays would converge against the pillar in the court-room near the place occupied by the witness.

The evening session opened, and Burr resumed the cross examination of the witness. It was a test of the profound skill and subtlety of the lawyer, the self-possession, courage and tact of the witness, standing on the very brink of a horrid gulf, calmly and intrepidly resisting the efforts of the terrible man before him to push him over. At last, after dexterously leading the witness to an appropriate point, Burr suddenly seized a lamp in each hand, and holding them in such a manner that their light fell instantaneously upon the face

of the witness, he exclaimed in a startling voice, like the voice of the avenger of blood—"Gentlemen of the jury, behold the murderer!"

With a wild, convulsive start, a face of ashy pallor, eyes starting from their sockets, lips apart, his whole attitude evincing terror, the man sprang from his chair. For a moment he stood motionless, struggling to regain his self-possession. But it was only a momentary struggle; the terrible words of the advocate "shivered along his arteries," shaking every nerve with paralyzing fear. Conscious that the eyes of all in the court-room were fixed upon him, reading the hidden deeds of his life, he left the witness stand, and walked shrinkingly to the door of the court-room. But he was prevented from making his escape by the sheriff. This scene, so thrilling and startling, may, perhaps, be imagined, though it cannot be described. Like the fall of David Deans, in the court-room, before judges, jurors and lawyers, when the doom of Effie, his youngest daughter, was pronounced by the testimony of her elder sister, Jeanie Deans, it struck the spectators with silent awe, changing the whole aspect of the trial, overthrowing in an instant the hypothesis which the Attorney General was confident would send the prisoner to the gallows—saving an innocent man from the deathful hands of a bold and skillful perjurer.

The false witness was arrested, two indictments found against him, one for murder, another for perjury. He was acquitted on his trial for murder, but subsequently convicted of perjury and sentenced to a long imprisonment.

The high-toned liberality and generosity with which

Hamilton and Burr conducted the contests of the bar, created no bitterness or animosity. They continued friends until they became great partisan leaders—until the polluting influence of politics, their collisions as rival statesmen, created that relentless antagonism, which culminated in the tragic scene when Hamilton fell by the hand of Burr, in the most famous duel in history—a duel which doomed its survivor to obloquy and reproach which he never outlived, and which, with the alleged treason for which he was tried and acquitted in 1807, ostracised him from his rank among the great men of the nation.

At the time Burr is introduced to the reader he had long drank of the Marah of the waters of disappointment and sorrow, had long labored at the task of Sisyphus, the mountain and rock.

It was Theodosia, his daughter, so lovely, so pure, so intellectual, so haughty, and yet so soft and gentle, that opened to Aaron Burr the brightest page in this blotted volume of his life. "She was nearly a complete realization of his ideal of a woman." Upon her he lavished the wealth of a soul that overflowed with secret tenderness. Long after his fall from power, she was the solitary star, shining in beautiful luster over the darkened and rough pathway of his life.

During his trial for high treason at Richmond, in 1807, Theodosia—then the brilliant leader of society in the most aristocratic city of the South, the wife of Joseph Alston, a distinguished citizen of South Carolina—by her devotion, sagacity and influence, powerfully aided her father's defense. In the darkest hour of that memorable legal drama, she evinced her deep affection in

language as heroic as it is beautiful. "My vanity," she said, "would be greater if I had not been placed so near you; and yet, my pride is our relationship. I had rather not live than not be the daughter of such a man."

A few years after the Richmond trial, which resulted in a victory for Burr, Theodosia met a fate which is still enveloped in gloom and mystery. At the close of the year 1812, she sailed from Charleston in a vessel bound for New York, for the purpose of visiting her father. Her husband was then Governor of South Carolina; though he provided everything conducive to her safety and comfort, which wealth and influence could command, the vessel never reached its destination—was never heard from after leaving Charleston harbor. At last all hope ended; the certainty that Theodosia was dead came home to them, and Aaron Burr was bereaved as few have ever been bereaved—left to "a life all winter, war within himself to wage." Still the properties of a mind, stern, uncomplaining and calm, a profound, scheming, subtle and powerful intellect, sustained him; and while the musings of his solitude became a votive offering to the dead—a rightful homage to their memory—he retained superiority among men, and brilliancy at the bar. He was endowed by nature with the power of gaining ascendancy over those with whom he was brought into contact. Whenever he desired to please, he could exercise blandishments which none but Aaron Burr ever possessed. Then he had attractions for all—smiles for the silent, deep attention for the loquacious, badinage for the gay, sentiment for the grave, and romance for the young.

Colonel Burr was compelled to remain at Utica sev-

eral days. During his stay he divested himself of that reticence and coldness which usually characterized his intercourse with strangers, and he became a general favorite with the members of the bar who were present.

One afternoon a number of young lawyers amused themselves by shooting at a target with pistols. As the exercise continued long after the adjournment of court for the day, many lawyers and others who were attending court assembled to witness the sport. Among the deeply interested spectators was Col. Burr. While keenly watching the effect of each shot, two young lawyers who had been engaged in shooting, approached him.

"Col. Burr," said one of them, "we should be very happy to witness your skill at target-shooting."

"My skill at target-shooting? How came you to suppose I had any skill as a marksman?" said Burr, fixing his piercing eye upon the speaker.

"You are an old soldier, Col. Burr, and we have always heard you spoken of as the best shot in America," said the young man.

"It is many years since I was a soldier, and I have had but little practice with the pistol since leaving the army. Times of peace do not—or, at least, they should not—furnish many occasions for the use of that weapon, since those occasions often leave a lasting regret. But as your invitation to join your sport was so respectfully given, I will accept it. At least, I will shoot once at the target. That will be sufficient for my unpracticed hand. Let me see your pistols."

Several were brought him. Selecting one of them, he balanced it a moment in his hand, sighted across its

barrel, then, taking his stand at the line from which each contestant fired, he raised his arm and presented the pistol.

It was a moment of intense, almost dramatic, interest. Before the spectators, pistol in hand, stood Aaron Burr, the very arm outstretched which, on the hights of Weehawken, laid the illustrious Hamilton cold in death. The eye that was now sighting the pistol had gleamed along a deathful weapon in mortal combat; had beheld his foe sink at his feet, bathed in blood. But a quick flash—a sharp report broke the spell that held the spectators—the bullet had sped. Aaron Burr had sent it home to the center of the target. A faint smile passed over his features as an exclamation of astonishment announced the unerring shot. Handing the weapon to its owner, he turned and left the field without uttering a word.

NOTE.—The bold, dangerous but ingenious act narrated on p. 6 has been attributed to Hamilton; but the intelligent reader will agree with the author of this work that it was not at all characteristic of Hamilton, who was seldom, if ever, known to resort to strategy at the bar, while Burr was as adroit in legal as he was in military strategy; a great lawyer in every sense of the word. In his youth, it was the author's good fortune to know Col. John Graham, a native of the city of New York, a student, and I believe a graduate of Columbia College, a gentleman of the highest standing and intelligence who died about twenty-seven years ago, at the age of seventy-five years. He was intimately acquainted with Burr and Hamilton. From Col. Graham, the author first obtained his information touching the incident related in the text. "I remember," said Col. Graham, "hearing of the event when it happened; and I used to hear Col. Burr relate it. 'It was very hazardous,' he would say, 'I should never dare attempt such a thing again, for I am sure I should fail, but all the circumstances happened to favor its successful execution.'"

The author also used to hear Gen. Erastus Root, of Delaware Co, N.Y., who knew Burr and Hamilton, relate the circumstance precisely as Col. Graham had. Mr. Parton also relates it in about the same manner.

POWER OF COURTS OF JUSTICE TO PUNISH CONTEMPTUOUS LAWYERS.

Instances where Judges have Punished Refractory and Insolent Lawyers—How Judge Kent dealt with a Dishonest, Brow-beating Lawyer.

THERE is no class of men who possess more power than do judicial officers of every grade when presiding in the court-room; they can punish lawyers of the most commanding talent, as well as the humblest members of the bar, for any breach of decorum, any contempt of court; they can order into custody of the sheriff any contumacious or disobedient witness, any tardy or corrupt juror; they can disarm and imprison any disobedient or disorderly sheriff. In our courts of justice we are accustomed to see a brilliant bar, a grand and petit jury, a large assemblage of spectators, all rendering silent and respectful obedience to a single judge. This obedience is rendered to him as a minister of the law. This is the reverence which the people have for the law that protects them, and for the judge through whom that law utters its voice and pronounces its judgment. Occasionally cases occur in which judges are compelled to enforce their power in punishing misconduct and contempt in the court-room. This was the case when the late Judge Gridley ordered those illustrious lawyers, John Van Buren and Ambrose L. Jordan into jail for indulging in a personal contest or

fisticuff during a famous anti-rent trial. These men—one of them the son of a President of the United States, Attorney-General of the State, and leader of the great Democratic party; the other one of the most renowned lawyers and legislators of his day—spent a day and a night in the cell of a common jail for contemptuous conduct in the court-room.

We remember another incident, when the famous and witty John Baldwin, for indulging in contemptuous language in an Alleghany county justice's court, was sentenced to imprisonment in the Angelica jail for twenty days. By his own assurance and daring, however, he managed to escape. After the justice had pronounced this sentence upon Baldwin he proceeded to draw the mittimus which empowered the constable to take the disrespectful lawyer into custody. The justice, who was an indifferent and slow penman, was a long time in preparing the somewhat technical document. Baldwin, who watched his proceedings with the deepest interest, waited until the magistrate was about to sign the warrant, when he suddenly seized a large inkstand full of ink and poured its contents over the fearful paper, destroying in an instant the hard work of an hour. This done, he mounted his horse and escaped into Steuben county, beyond the reach of another mittimus.

But Baldwin did not escape without pursuit. As soon as order was restored, after the ink had been deluged upon the attachment, the justice commenced a new one, while the impertinent lawyer mounted his horse and fled homeward. Night had set in; his animal was jaded and lame; the rider corpulent and heavy.

But a beautiful autumnal moon lit up his dreary way and he hoped to reach the Steuben county line before the officers of the law, armed with a new process, could overtake him. But, when within two miles of the goal of safety, his ear caught the clatter of horses' hoofs on the ground, and, looking back, saw two horsemen rapidly approaching. Knowing they were the officers hastening to arrest him, and that escape by flight was impossible, his fertile mind suggested another and more successful mode of escape. Suddenly wheeling his horse, and boldly facing his pursuers, he sternly inquired their business with him. They informed him that they had an attachment, by which they were commanded to take him to Angelica jail, and that he must accompany them thither. "Stand off, you scoundrels!" roared Baldwin, "or I'll blow you through, for I am a desperate and dangerous man." And he drew from his pocket an inkstand enclosed in a long brass case, presenting it at the breast of one of the officers.

Its polished surface flashing in the moonbeams, like the bright barrel of a pistol, gave it a most murderous appearance. The constable and his assistant started back appalled.

"Leave me, you villains! or, by the heavens above us, I'll send a bullet through your hearts! Leave, I say!" and he gave the inkstand a shake, causing it to click like the cocking of a pistol.

This was enough. The next moment his pursuers were galloping homewards, and Baldwin continued his way safely, thinking, as he afterwards said, his protecting genius that day had assumed the form of an inkstand, for, in two instances, it had saved him from

being severely injured for his bitter and contumacious attack upon judicial dignity. He was never afterwards molested for his assault, contemptuous as it was.

There is another case in point. In the early days of Buffalo, a leading lawyer was arguing a cause in the Court of Common Pleas where one of the side judges presided—the first judge not being on the bench. To show his superiority, the judge often put irritating questions to the counsel. To help the matter along, the two other side judges on the bench annoyed the lawyer in a similar manner.

At last he could endure this no longer, and, pausing in the midst of his argument, he said: "If your honors will excuse me, I would like to say that this court reminds me of a Virginia rag-bag team."

"Well, sir, what kind of a team do you call that?" asked the Judge.

"It is a team, your honor, composed of two mules and a *jackass*."

For this the lawyer was fined fifteen dollars and two days' imprisonment.

On one occasion, when that learned and venerated judge, William Kent, was presiding at a term of the Supreme Court in the city of New York, a somewhat singular and interesting case came before him, during the argument of which he used his judicial powers for punishing contemptuous conduct with much severity and justice. A lawyer, with something of an unsavory record, had been employed by a well-to-do business man to collect a debt of about nine hundred dollars, but the matter ended in a miserable failure. The action brought to recover the money was dismissed

with costs against the plaintiff. Some time after this, his lawyer presented him a bill of fifteen hundred dollars for his services. As he declined to pay it, the lawyer commenced a suit in the Supreme Court against him to recover it, and a legal contest was the result. The attorney, not wishing to try the cause himself, employed another counsellor of the name of John Percy, who, like his employer, was one of the flunkeys that infest the profession in that city and who had, for his knavery, been disbarred. After the action was commenced for the recovery of the fifteen hundred dollars, the defendant procured an order from the judge staying the proceedings of the plaintiff. Disregarding this order, the lawyer entered up a judgment against his former client—the defendant—for fifteen hundred dollars, with interest and costs. Thereupon a motion was made to set aside this judgment because rendered in disobedience of the order to stay proceedings, and the motion came on to be heard before Justice Kent. Lawyer Percy, to whom we have referred, appeared in opposition to the motion; whereupon the counsel for the defendant in the judgment took the preliminary objection that as Percy had been thrown over the bar he could not appear in the case. The Judge sustained the objection. This aroused the indignation of Percy, who sprang to his feet and vehemently insisted that there was no evidence before the court proving that he had been thrown over the bar.

"This court," said the judge, "has judicial knowledge of all its facts."

"There is no jurisdiction shown in the order throwing me over, and there is nothing in it to show that the order was legally made, and I insist that I have a

right to be heard here, and I demand my rights," said the lawyer.

"You have no standing in court, Mr. Percy, any more than a man convicted and under sentence for any other crime has. Your appearance here, sir, as a practitioner, is of itself a misdemeanor, for which you will have to answer to the proper tribunal," said the judge.

"But, your honor," continued Percy, "I must and will be heard in this matter; I desire to convince your honor that I have been——"

"Mr. Percy," said the judge, very emphatically,—a frown lowering over his unusually benevolent features, "this court cannot and will not hear you any further. You have been degraced from this bar,—and the court desires that you will understand your unworthy position and not compel us to remind you of it in a manner that will teach you again that 'the way of the transgressor is hard.' If, however, you will employ some respectable attorney to speak for you, the court will hear him with pleasure in your behalf."

A Mr. Richard Hosford, who had been associated with Percy, arose and commenced an argument against granting the motion to set aside the judgment. After he had been speaking a short time the judge made a statement to him referring to some alleged irregularity in the plaintiff's proceedings. In a moment Percy was on his feet again, exclaiming, "That is not so, your honor, the motion papers do not show it."

"Sit down, Mr. Percy, or rather, continue to stand, sir, and listen to the penalty which this court is about to inflict upon you for your insolence and contumely. Percy, the court sentences you to pay a fine of two

hundred dollars, and to stand committed in the common jail until the fine is paid, for a time not exceeding thirty days. The sheriff will take the prisoner into custody."

But the determined and insolent lawyer was not yet silenced.

"Your honor, I cannot submit to this without——"

"Silence!" thundered the judge, "another word from your lips and I'll commit you to jail for the longest time the law will permit me, and increase your fine double what it is now."

But the sheriff now appeared, took the lawyer into his custody, and he soon became an occupant of a cell in the Tombs.

The next day Mr. Hosford, in behalf of Percy, obtained a writ of *habeas corpus* from one of the judges of the Court of Common Pleas of the city of New York, on the ground that the lawyer was illegally imprisoned.

At the conclusion of a lengthy and exhaustive argument on both sides, Percy was remanded to jail. After the lapse of several days some friends came to his assistance, the fine was paid and Percy released. He never again attempted to practice as an attorney-at-law in any court. The judgment of fifteen hundred dollars was set aside with costs, and the avaricious lawyer who obtained it was heavily fined for disobeying the order staying the proceedings of his suit.

A DIVORCE FIEND.

A Lawyer entraps his Wife into a Divorce under Circumstances of Unparallelled Cruelty.—Touching Scene.—The Tables Turned.—The Divorce set aside.—Stern Rebuke by a Judge.

In the year 1856 there lived in the city of New York a gentleman of the name of Lucius E. Bulkeley. He was an Attorney and counsellor at law of respectable standing, enjoying a very remunerative practice.

In 1850, he was united by marriage to an estimable and accomplished young lady, the possessor, in her own right, of considerable property. Two years after their marriage a son was born to them, and their married life bid fair to be one of happiness and prosperity. But the brightest hopes and the most brilliant prospects are often the soonest dissipated.

Not long after the birth of his child, Bulkley conceived a violent passion for another lady, which soon culminated in criminal intimacy. But so carefully did he conduct his intrigue, that his wife remained in perfect ignorance of it. It was the study of his life how to rid himself of his faithful and affectionate wife. His passion for his paramour was so strong, that at times, he thought of removing his wife by administering some slow but fatal poison. Corrupt and lost as he was to all conjugal affection, he could not persuade himself to commit a crime so dreadful, so fraught with danger to himself. Determined on a separation, he began to prepare

the way for a divorce. But there was an insuperable difficulty in his way; his wife was purity and truth itself; ignorant of the dark designs of her husband against her, she regarded him with deep affection; her love and confidence in him were unbounded. It was the love of a high-souled, devoted wife and mother.

Bulkeley resorted to many ingenious and diabolical devices to entrap her into such appearances of guilt as would enable him, by the aid of prepared witnesses, to effect his object. He would send men to his house commissioned by him to seek an opportunity to be alone with her, and then have another of his creatures enter the room, and pretend he had caught them *flagrante delicto*.

But so perfect was the shield of her purity, so well balanced her common sense and judgment, that all these devices utterly failed, though deeply and adroitly planned.

With every failure his determination grew stronger. At last he matured a plot so thoroughly and carefully that he attained his object—a decree of absolute divorce from his wife—on the ground of alleged adultery.

Mrs. Bulkeley's mother, to whom she was tenderly attached, resided in California. One day the husband informed his wife that he had been thinking about her visiting her mother, and that he had decided to let her go as soon as she could complete her arrangements for the journey. Overjoyed at the prospect of meeting her mother, she warmly thanked him for his thoughtful kindness, and immediately began preparing for her departure. In those days the only route to California was

by steamer to Aspinwall, across the Isthmus, and then by steamer again to San Francisco.

In due time all her preparations were complete, and the day for her departure arrived. Bulkeley expressed great sorrow at the thought of parting with her. Often he would say, "I almost regret that I proposed to have you go, I shall be so lonely in your absence."

"The time for my return will soon come, you will not look for it more anxiously than I shall. Were it not that I feel as though I must see my dear mother once more I would not go. I shall be with you, Lucius, in spirit, all the time I am absent," she said to him while on the way to the steamer.

Almost tearfully he accompanied her on board, talked affectionately with her, and tenderly caressed his little boy. When the order was given for all who were not passengers to leave the steamer, he handed her a sealed package, saying, "There, Mary, is a present for your mother, which I thought of yesterday. Be careful of it, for I think it will please her."

The lady accepted it and in a voice broken with grief, promised to carefully convey the present to her mother.

After fervently kissing his wife and tenderly embracing his child, Bulkeley left the steamer. It was soon under way, swiftly gliding down the bay. The lady saw the city vanish from her sight, and the thought of her loved husband—of his love, his kindness—of the last parting scene, came crowding to her heart, blinding her eyes with tears.

The next morning, when well out to sea, she thought of the package. It occurred to her that it was singular

he should think of a present to her mother so shortly before the time she was to sail, especially that he should wait until they were about to part before giving it to her. The more she reflected upon the matter the more strange it seemed to her; but then, she thought, he did not, in the midst of the excitement of her leaving and other demands upon his time, think of the present, and it did not occur to him until nearly the time for going on board the steamer.

At last curiosity to see what present he was sending her mother, led her to open the package. She found nothing that appeared like a present in it, but there was a paper having the appearance of a legal document, the filing on which was as follows:

"*Supreme Court, Lucius E. Bulkeley against Mary R. Bulkeley. Summons and Complaint. Lucius E. Bulkeley, Atty. in person.*"

In the package was also a letter from him which read as follows:

"New York, October 10th, 1856.

"Mrs. Mary R. Bulkeley.

"Madame,

"Your infidelity with Richard Francis has long been known to me. It has almost broken my heart. Of course, as I am a man of honor—a man of sensitive mind, I cannot submit to this great wrong. I said nothing to you about it, because I knew it was useless, because your crime had been so many times repeated. You are now informed that I know all and have known all for a long time. You will see by the enclosed papers that I have resorted to the only honorable alterna-

tive left for me—an action for a divorce against you. As I have said, I have the most damning proof of your guilt, and in a short time you will no longer be my wife. The court will make such an order touching the care and custody of our child as will be just.

"Yours, &c.,

"L. E. BULKELEY."

Twice she read over this terrible letter, and then fell fainting to the floor of her state-room, where she remained unconscious for a long time, how long she could never tell.

"My God! My God! Merciful Father! What is this? What am I to do? Can it be, oh! can it be? This is from my husband, whom I love so well, and who I thought loved me so fondly. Oh! my God! Can he mean all this?"

Then she composed herself and carefully read the document. There, in legal terms, and in the terse but painful language of a complaint in an action of adultery, she read the detailed allegations of acts of infidelity "committed by her at divers times and places, with one Richard Francis, and with divers other persons, whose names are now unknown to the plaintiff." The whole concluding with a demand for a judgment or decree of the court that "marriage between the plaintiff, Lucius E. Bulkeley, and the defendant, Mary R. Bulkeley, be dissolved, and set aside, that the plaintiff have the care and custody of Henry, the child of the said marriage, until a further order of the court," &c., &c.

Following the complaint was the usual affidavit verifying the truth of the matters set out in it, signed by

him and sworn to before a notary public of the city of New York.

Well might the unfortunate lady exclaim, "My God! What am I to do?"

She was now far at sea, and could not return. It would be many days before she would arrive at Aspinwall. Could she return from there to New York? For several days she was almost crushed with sorrow. A pure, unsullied wife she knew herself to be. Did her husband believe she had been unfaithful to him? It could not be; and yet, he had sworn that she was. "Who had deceived him? And by what diabolical means was the deception effected?" were thoughts that agitated her mind.

To her friends on board the steamer, she communicated the course her husband had taken. They, who had known her for years, knew the purity of her life, and her devotion to her husband and child; and they felt that a damnable plot had been made to blast her for ever.

Loving, devoted, trusting and unsuspecting as she was, she still possessed a soul and spirit, which would not tamely submit to this great wrong without a determined effort to vindicate herself.

On her arrival at Aspinwall she informed her friends that she should return to New York and defend the base action brought against her, to the bitter end. But such was the state of her mind, such was her weak physical condition, that her friends did not think it prudent for her to return, and they earnestly remonstrated against her project of returning. They told her, that, long before reaching New York, her husband

would secure his decree of divorce, that she would have ample time to open the judgment, and set it aside. Finally, they induced her to continue her journey to California, recuperate her health, and, as soon as possible, return and assert her rights.

She remained two months in California and early in January, 1857, returned to New York. Her husband, in the meantime, had obtained a divorce.

Immediately after her arrival, with a legal friend, she called on him and demanded an explanation of the papers and the letter he gave her when parting with her. His only reply was, handing her a certified copy of the divorce; then suddenly seizing her little boy, and carried him away.

But he was mistaken in the woman with whom he had to deal. She no longer gave way to useless tears and grief. She was determined to unmask the deep perfidy of the perjured wretch she had so fondly loved and honored, as a true wife should love and honor her husband. He did not believe she possessed the spirit, courage and determination to make a fight against him. He sent her word that if she made any attempt to set aside his judgment of divorce, he had witnesses under his control which would *make* all her efforts abortive and destroy for ever all the character she had left. Not the least intimidated by these threats, she moved to her attack on him and his divorce without a moment's delay, and with the force and power of an indignant, wronged and gifted woman.

She employed able counsel who prepared the necessary affidavit on which to found a motion to set aside the judgment of divorce. The affidavit went further

than the usual papers in such cases. They exhibited a case of duplicity and fraud, even perjury, on the part of the husband in obtaining it, that would result in his severe punishment by the court.

These papers were duly served on him. The service was soon followed by proposals for an adjustment of the case, as base and infamous as they were impudent and insulting.

He proposed if she would submit to what had been done, and raise him five thousand dollars, he would give her the care and custody of her child : or, if she would raise him fifteen hundred dollars, he would obtain from the clerk of the court where the judgment of divorce was entered and docketed, the record of it, and destroy it. He knew that this could not be done ; he knew the only way to destroy that record, was the course the lady had adopted ; but he yet believed he could deceive her, as he had done for years, by his artfully practiced deceptions.

His proposals were indignantly rejected, and, in due time, the motion to set aside the divorce came on for argument at a special term.

Bulkeley, with an able lawyer associated with him, appeared in opposition to the motion; Mr. Justice Platt Potter presided. A more pure, able and accomplished magistrate never sat on the bench of the Supreme Court than he.

It would hardly seem possible that a man could have the hardihood to contest a motion made under these circumstances, but Lucius E. Bulkeley possessed every requisite for doing this. He fought to sustain his decree, with a courage and confidence that had

something appalling in it. But the moving papers of his wife were damning evidence of his guilt, and miserable, cruel deceit, which no sophistry, no allegation or argument of his could wipe out.

When the argument was concluded, Judge Potter, instead of taking the papers and reserving his decision, proceeded to pronounce judgment at once.

"This motion," he said, "I might decide upon the mere legal questions involved in it. But there are other questions in it that require the consideration of the court. These are the moral questions it presents, and the court cannot, without failing in its duty, pass them by. It must take judicial notice that the plaintiff is an attorney and counselor of this court, and therefore, one of its officers: that by virtue of the rights and privileges which this position confers upon him, he has committed a gross abuse of the process and authority of the court.

"He used the privilege which his license to practice confers, in order to accomplish his own private objects and purposes. By a secret and cunningly devised stratagem, he has decoyed a defenseless, and, we believe, a virtuous woman and too trusting wife into a condition of entire helplessness; and, while so ensnared, has perverted the use of the process of the court to the commission of a most unhallowed fraud upon her rights, and under circumstances of unparalleled heartlessness and cruelty.

"Nor is the moral aspect of this case relieved by the fact that the victim of this injustice was his wife, to whom, at the solemn altar, he had pledged the holiest

vows to love, cherish and protect, and that she is the mother of his child.

"It is sufficient for the court to know that the act, which he calls the service of a summons and complaint, and upon which he bases his decree, was, in no sense, a legal service, but was a fraud imposed by him, not only upon the defendant, but upon the court, and deliberately entered upon its solemn records.

"If this pretended service was made in the manner detailed in the affidavits, his clerk, by whom it was effected, in swearing to due service, was guilty of most deliberate falsehood, if not legal perjury; and the plaintiff, who doubtless planned the scheme, and who, knowing its iniquity, availed himself of its uses, is responsible to the charge of moral, if not legal subornation of perjury.

"To tolerate, for one moment, an act so flagrant and wicked, to be consummated by one over whom the court can exercise its control, to pass it unrebuked, does not comport with the idea of a pure and honest administration of justice. Such a reproach, while in the exercise of the power with which I have been invested, I shall not suffer at my hands.

"The affidavit of the service of the summons and complaint was made in the city and county of New York. To the grand jury of that county I commit the consideration of this paper. The affidavit of the plaintiff by which he obtained the order of reference, in which he coolly states, 'that no copy of an answer to the complaint in this action has been received, nor has the defendant entered any appearance in the action, nor has she, or anyone in her behalf, demanded a copy

of the complaint, and deponent was present and saw the summons herein served on the defendant; was taken before the clerk of Montgomery County, to whose grand jury I recommend the proper attention.

"To the general term of the Supreme Court, in whose immediate district this plaintiff, this attorney and counselor, conducts his chief practice, I call attention to this officer of the court.

"The service of this summons, the judgment of divorce obtained upon it and all subsequent proceedings are set aside with costs."

Thus ended this famous judgment of divorce. Why the court did not promptly disbar Bulkeley is strange indeed; why he was not indicted for perjury or subornation of perjury is stranger still. In these days the Bar Association would take the matter in hand and severely punish him for the disgrace he brought upon the profession.

WILLIAM H. SEWARD AT THE BAR.

Algernon Sidney, Seward and the Higher Law.—Trial of Wyatt.—Dramatic Scene in the Court Room.—The State Prison Whipping-post.—John Van Buren.—Seward's Grave.—The Negro Freeman.

THOUGH Mr. Seward, at a comparatively early age, surrendered his chosen profession for the more ambitious career of the politician, he attained a distinguished position at the bar of the State, contending with lawyers whose learning, ability and varied professional accomplishments rendered them illustrious examples of forensic excellence.

He first appeared in the Court for the Correction of Errors, in the leading case of Wakeman *v.* Grover, a case that everywhere attracted the attention of business men, particularly merchants. After a long, tedious and close legal contest, Seward was defeated, but it was one of those defeats in which the laurels of the vanquished are as green and lasting as those won by the victor. This case, as reported, is still regarded important, for in it the law of the State governing assignments in trust for the benefit of creditors is in a measure settled.

As a lawyer, Mr. Seward possessed a minute, comprehensive, rapid observation, a memory at once retentive and ready, a mind capable of great exertion, an admirable control over the momentum of his feelings in times of the most intense excitement. He exhibited the force,

extent and intensity of his thought, in terse, logical language. At the bar and in the senate he frequently produced effect by the remoteness and novelty of his combinations, the force of contrasts, and the striking manner in which the most opposite and unpromising materials were harmoniously blended together, "not by laying his hands on all the fine things he could think of, but by bringing together those things he knew would blaze into light by being brought into collision." Thought and deliberation presided over all his mental efforts, and he gave as the result a cogency of reasoning, a depth of research, a clearness of elaboration, that rendered them powerful and effective. He was not, however, distinguished for grace of oratory. His phraseology was sometimes too stately and his cadence too measured. His voice was low and at times husky, wanting that musical intonation and varied modulation that rendered the oratory of Clay, Webster, John Van Buren, Samuel A. Tallcott and Ogden Hoffman so pleasing.

During the later years of Mr. Seward's practice he indulged in the habit of taking snuff to excess. It is said this affected his voice to such an extent that he threw his snuff-box away, but he could not quite overcome his love for Maccaboy. Often when engaged in the trial of a case, he had access to the snuff-box of Dr. Peres, the crier of the court in Cayuga county. The doctor was the very personification of politeness; his admiration for Seward was unbounded, and the manner in which he presented his snuff-box to his friend afforded great amusement to the bar. Peres was a close observer, and knew exactly when a turn in a case on trial rendered the snuff-box necessary, and it was im-

mediately tendered in a manner that plainly proved that it is more blessed to give than to receive. "Mr. Seward," the doctor would say, "Mr. Seward is a great man, he takes snuff with the air of a prince, and he would have been beat in many a law-suit if I hadn't strengthened him with a pinch of snuff at the right time. Snuff, sir, is a great thing, and it's a great thing to know just the time to take it."

Notwithstanding the defects in Mr. Seward's oratory, he was an able reasoner and a skillful advocate. His arguments always commanded attention by their force, celerity, perspicuity of detail and plenitude of legal knowledge. It was impossible to follow him through any of his legal or parliamentary speeches without being delighted and improved; yet, without close attention, he was liable to be misunderstood. Judge Cowen once said, "William H. Seward is one of the most effective reasoners at the bar. He always pleases by the correct manner in which he demonstrates his legal problems; but he is sometimes obscure from the intellectual effort required to follow him."

There was a calm dignity in Mr. Seward's manner when speaking that gave effect to his language, and when occasion required, as we shall see hereafter, he could assume a manner that was imposing, if not majestic. He used the English language in all its force and in all its purity. A phonographer might have published his language as it fell from his lips, so finely turned were his periods, so well chosen were his words. He possessed much imagination, but his eloquence did not rest on his imagination. It is said he studied the Bible more than any other book, and he always admired

its exquisite Saxon English, its lofty and beautiful imagery, so opulent in thought, so excellent in sentiment, so replete with elegant antithesis.

He united habits of abstraction with every-day practice, and he considered things in general or in detail as occasion required. In this he differed from those who possess a knowledge of general principles—a talent for general reasoning, united with great fluency of speech, and who to the crowd, seemed to possess abilities suitable for any exalted position of life, while wholly incapacitated for close, logical, or minute attention to detail.

With his pen more than his lips, Seward was a dispenser of eloquence. As a writer, he had few superiors. His great merit in this sphere consisted not so much in any special suggestion of his philosophy—in any nicely defined theory of his own, as in the accuracy, dignity, and profundity with which all that was useless and ambiguous was discarded, the great delicacy with which all that was valuable was elucidated, methodized and enforced. There was, occasionally, a startling boldness and earnestness in his language and positions that had an effect which few can produce, in giving impetus and embodiment to public opinion. The superlative merit of his state papers, written while governor of his state, first gave him prominence before the public. Whatever tended to the interest of the State of New York as viewed from his partizan standpoint; whatever tended to promote the interest of the old whig party, found eloquent recognition from his pen. His unchanging fealty to political friends—the manner in which he caught the "tones of the times," and the sagacity with which he

promoted his own political interest, caused his enemies to style him a demagogue. If his legal and political productions do not exhibit the high qualities that distinguish those of Kent and Marcy, they show a thoroughness in linguistic skill and penetration, an acute power of critical dissection, and more than all, great skill in the consideration of opposite arguments and conflicting authorities.

He was a thorough classical scholar, and dwelt in the old ethnic world as familiarly as an inhabitant. His knowledge of that world rendered his writings many-tinted, fervid and eloquent.

When the incomparable writings of Mr. Burke were winning the admiration of all parties in England, it was said by some of his jealous contemporaries, that he adopted the style of Bolingbroke. "How can that be?" asked a generous and sagacious reviewer, "since Burke is a more profound and brilliant writer than Bolingbroke." Though the substance and style of Mr. Seward's productions were sometimes severely criticised, he was never charged with being the servile copyist of any other writer. He was, as has already been said, an original thinker, and such men seldom adopt the manner and style of others; their thoughts are too independent to be held in any prescribed limits. The fabric of Mr. Seward's subjects rested "upon massive columns of Tuscan simplicity and strength."

It is true, that he owed much of his fame to the stirring events through which the nation passed while he was on the stage of action; still, these events only stretched the line of his endowments as a statesman and diplomatist; for great events cannot create, though they will al-

ways excite ability, and stimulate dormant power into operative existence.

Seward lived in an age when, as he believed, great evils were struggling for the mastery and perpetuity. He saw the tremendous issues that were soon to be forced upon the nation, and he has been charged with hastening forward those issues, instead of attempting to avert them or turn them from the bloody arbitrament of arms. On the other hand, it may with great propriety be said, that he beheld in the threatening aspect of the political atmosphere an inevitable crisis, and, believing it could not be averted, he forwarned his countrymen of its approach, thus preparing them for what he termed "the irrepressible conflict."

In Mr. Seward's reference to the higher law, so much applauded, so deeply censured, he reiterated the sentiment, and nearly the language of that illustrious martyr of civil liberty, Algernon Sidney, in his eloquent and heroic rebuke of the high-handed aggressions of a despotic king and a subservient parliament.

"No people," said Sidney, "can be obliged to suffer from their king, or other rulers, what they have no right to inflict. The powers of civil rulers are limited, and beyond those limits their laws are without authority. The powers that be, are not only ordained by God, but they are also defined by Him, and if, in transgressing these limitations, the magistrate, ruler, or the state itself, invades that *higher law*, the mode of redress, in such cases, must be left, in each particular instance, to the determination of the suffering party, whose right it is to appeal to that *higher law*."

In those admirable discourses from which this ex-

tract is taken, Sidney insists that all governments that do not vouchsafe essential justice to all, are *magna latro cinia*—wholesale roberies, and that men must, therefore, observe another rule of obedience, higher than the laws of the land. This doctrine, enforced by the brilliant and powerful genius of Sidney, produced the most profound sensation in England and throughout continental Europe. It rapidly accelerated that turbulent spirit of liberty, which for years had been silently, but effectually, undermining the power, and limiting the prerogative of the first Charles, culminating in the great revolution of 1649. Thus it will be seen that William H. Seward and Algernon Sidney, occupied, in their respective ages and nations, similar positions. Before what they deemed to be great national evils, and before great revulsions, they both invited an appeal to the "higher law," with an emphatic and startling eloquence—deep and subtle reasoning, and their appeal brought one to the scaffold, both to immortality.

But to return to the career of Mr. Seward at the bar. Though he was not what may be called a criminal lawyer, it was his fortune to be engaged in many great criminal trials. The criminal law practice had attractions for his sympathetic and active mind. It gave ample room for the exercise of his well-disciplined mental energies—his power of collecting, combining and amplifying. It gave scope to his critical knowledge of statute law, common law and rules of evidence, and "his deep insight into the springs of human actions." It must not be supposed from what has been said that Mr. Seward was not constituted for a success-

ful jury lawyer, or that his calm, deep reasoning rendered him strong before courts in banc, while his speeches at *nisi prius*, like those of the gifted and splendid Talfourd, flew over the heads of jurors, perplexing instead of enlightening them. On the contrary, when Seward addressed a jury he brought his reason and philosophy to their comprehension. He entered the jury-box as one of their number and took up the case from their standpoint, considering it as they would consider it. Again, he was a keen physiognomist, and read in the face of each juror before him his susceptibilities and proclivities, and then found proper words and ideas to reach him. He forged the links in his chain of reason so adroitly and distinctly that they intuitively followed the process until he reached his conclusions.

On one occasion, after he had finished an exhaustive argument, in a very important civil case, in which Daniel Cady was his opponent, he said to a friend sitting near him in the bar: "I shall have a verdict in this case. I have learned the nature and disposition of every man on the jury, and I have addressed myself to each one of them. Do you see that stern and somewhat thoughtful juror at the end of the upper seat in the jury box? He is an intelligent, old school Presbyterian elder, and will be a controlling spirit with his fellow-jurors. He squares his actions exactly by the stern rules of right and wrong, as taught in the scriptures, and believes that a man should perform his contract, even if martyrdom followed. When I talked about the necessity of heavy damages for the breaches of the contract in this case, and the want of any legal excuse for them, he drank in every word I uttered, and

he is with me, and I shall succeed." Seward was right, he obtained a very large verdict, but his wily opponent found some error in the case, and the judgment entered upon it was overruled.

Mr. Seward's defense of William Freeman, the murderer of the Van Nest family, was one of the most masterly and able in the history of criminal trials. But brilliant and great as was his defense of Freeman, the moral effect of his defense of Henry Wyatt, renders that the crowning effort of his professional life.

Wyatt was a convict in the state prison at Auburn. He was brought to trial in June, 1846, at a special term of the oyer and terminer, for boldly and atrociously killing a fellow-prisoner. The negro Freeman was tried at the same term. John Van Buren, then attorney-general of the state, conducted the prosecution for the people. Considering the brilliant and successful manner in which he discharged his duties, it is singular that so little commendation awaited him. His efforts in those cases lose nothing when compared with those of his great opponent. As was said of the eminent Irish advocate, Bushe, after his powerful speech in the Trimbleston case, "he held, alternately, the passions, the understanding, and the senses, captive—willing captives, to the music of his diction, the might of his reasoning, the enchantment of his exquisite delivery," and in each case he carried the jury with him, and Freeman and Wyatt were both convicted. The former, it is well known, died pending a new trial, which the supreme court had granted him; the latter was executed. The success of Van Buren in these cases, after the all-powerful and now historic effort of

Seward to save his clients, were victories seldom won in the contests of the forum. Their dazzling prestige should have shielded him from the effect of his defeat in that Trafalgar of legal battles, the Forrest divorce case.

In the case of Wyatt, Mr. Seward interposed the plea of "moral insanity," that subtle plea which insists "that persons who are the subjects of natural or congenital derangement, are not morally accountable, because, though they may know an act to be wrong, cannot refrain from doing it, being irresistibly impelled to its commission—that when disease is the propelling, uncontrollable power that urges a man to commit a crime, he is as innocent of intent, or malice, as the weapon with which the deed is committed, the mental and moral elements being as guiltless as the material. That he might as well be punished for his inability to distinguish between right and wrong as for his incapacity to resist a mental disease that forces the crime upon him, without any choice of right or wrong." This plea, resting on a subtle medical theory, though sustained by some of the most gifted and enlightened men of the age, is unpopular; but Seward supported it in the case of Wyatt, boldly and powerfully, and if unsuccessful, it resulted, as will be seen, in the banishment of the whipping-post and the lash from the prisons of this and other states, as well as from the navy.

When Seward was governor of New York he frequently, but fearlessly, urged the abolishment of whipping as a punitive measure in prisons. On this trial, after many closely contested objections, he was permitted to prove that when a prisoner was sentenced to the "cat," as whipping was called, his back was bared

down to his loins, that he was then drawn up to a post, until compelled to stand on tiptoe; his hands tied to rings in the post; that the cat, a whip composed of several hard lashes made of rawhide was then applied with such force that large, bloody ridges of quivering, lacerated flesh followed every blow.

Mr. Seward insisted and proved by abundant medical authority and evidence, that the blows thus struck across and upon the spinal column affect the brain, often producing insanity. He proved that Wyatt had repeatedly been whipped in this manner, and that after each whipping something unusual was discovered in his manner. During the trial, Seward, in order to prove the manner the cat was used in Auburn prison, applied to the court for a writ of *subpœna duces tecum*, commanding the keeper of the prison to appear before the court, with the record which the law compelled him to keep, showing what convicts had been whipped, at what time or times, how many lashes, and their effect on the prisoner. The motion for this writ was strenuously and strongly opposed by Mr. Van Buren; but Seward gained his point. The writ was granted and placed in the hands of the sheriff.

It was reluctantly and sullenly obeyed by the prison warden, who appeared in court, took the witness stand, with a large book lying on the table before him.

"Are you the warden of the Auburn prison?" asked Mr. Seward.

"I am, sir."

"Is there a record kept of the convicts who undergo the punishment of flogging in the prison?"

"There is, sir."

"Where is that record ?"

"There is the book, sir," said the warden, pointing to the large book that lay before him.

Mr. Seward stepped forward to take it up ; but while in the act, the warden sprang up and snatched the book away, exclaiming, "That book is not designed for your inspection, sir ; it is private, and there is no law that entitles you to examine it, and you shall not."

Mr. Van Buren arose and attempted to sustain the warden ; but Seward, drawing himself up until his form appeared absolutely gigantic, calmly waving his hand, said: "One moment, Mr. Van Buren ; I have the right to speak now, and you have not that right. The commands of a court of justice in this country cannot thus be trifled with. Your honor," he continued, turning to the judges, "in the name of justice, in the name of humanity—in conformity with the statutes and the rules of our laws, I ask that this man be compelled now to give into my hands that record, for the keeping of which he is now guilty of a contempt against this court. Shall I have them, sir ?"

He remained standing in a position of imposing dignity, with his eye fixed upon the presiding judge.

It is said that Mrs. Siddons, the great English actress, never gained more applause and fame, by anything she did in her long and illustrious career, than by the manner in which she dismissed the guests in the banquet scene in "Macbeth" when the ghost of *Banquo* arises. It was remembered as long—was as deeply impressive as any of her thrilling tones, and her startling language. There was something akin to this in Mr. Seward's manner when he appealed to the court ; it

invoked the profoundest silence throughout the court-room, a silence as impressive as it was deep.

"Witness," said the judge, "you will immediately deliver to Mr. Seward the book you hold in your hands. Your refusal will subject you to the pains of imprisonment."

For a few moments the warden hesitated, while every eye in the court-house was fixed upon him. Just as the judge was about to order the sheriff to take him into custody, he laid the book on the table, and without further resistance Mr. Seward took it up and turning to one of its pages read as follows :

"On this —— day of ——, 184—, H. W., a convict, was sentenced to thirty lashes on his back, but on removing his clothing for that purpose his back was found to be so scarred, cut and ridged by previous whipping, that it was evident the effect of any more lashes could not be discovered, if they were even felt, and therefore, his sentence was changed to the effect that he should receive the lashes on his bare legs instead of his back."

"Here," said Mr. Seward, as he laid the book on the table, "is the evidence of the inhumanity of prison punishment. Within the walls of the prison itself there exists evidence of inhumanity and torture sufficient to drive a sane man into dementia, and that evidence is now before this court. Great God, what a record! What thoughts of horror and suffering come with it! Well may the officers of the prison shrink from giving its shocking details to the public; and yet they are not to blame—they are only the instru-

ments for the execution of a barbarous punishment. * * * * We insist it was punishment like this that drove our client into insanity."

Mr. Seward's address to the jury in this case was one of his most powerful forensic efforts, remarkable alike for eloquence, practical wisdom, and learning. It compares favorably with Erskine's great defense of Hadfield, under a similar plea, though his client was, as we have seen, convicted. The trial opened the eyes of the public and the legislature to the inhumanity of the whipping post in the prisons of our state, and soon after an act was passed banishing it from all places of punishment.

At the foot of a gentle declivity, in the beautiful cemetery at Auburn, rest the remains of William H. Seward. A plain, though exceeding rich, classically designed monument marks the place where one of the great statesmen and orators of the republic "sleeps the sleep that knows no waking"—one who, like Henry Clay, saw the presidential chair of the nation within his grasp, and then saw all hopes of reaching it vanish like "the stuff dreams are made of." As Plutarch has well said "'tis in human life as in a game at tables, where a man may wish for the highest cast; but if his chances be otherwise he is e'en to play it as well as he can, and to make the best of it." So it was with Clay and Seward. They wished for the highest cast, managed well to gain it, but their chances were otherwise. Yet they played their great presidential game well, and, indeed, they made the best of it.

A tastefully-carved entablature on the monument bears the simple inscription :

WILLIAM H. SEWARD.

A little below is inscribed the date of his birth and death. But, as if conscious that his fame is given to history, that will live long after marble has crumbled to atoms, the monument makes no other attempt to perpetuate the fame of Seward.

By his side, his wife, daughter, and many other relatives are resting; while scattered about the cemetery are the tombs of many of his early friends—many of those with whom he mentally measured himself in his early contests at the bar—many of his political opponents—many of those who aided him in his first political advancement. Here, then, is the last resting-place of William H. Seward; while in far distant tombs, life's fitful scenes ended, many of the great men with whom he acted or whom he opposed in his conspicuous career, are reposing, unconscious of all that "made ambition glorious."

While standing by the grave of Seward the eloquent words of one who had mused among the tombs of Westminster Abbey came to me. "When," said he, "I look upon the tombs of the great, every emotion of envy dies within me; when I read the epitaphs of the beautiful, every inordinate desire goes out; when I meet with the grief of the parents upon the tombstones, I conceive the vanity of grieving for those whom we must quickly follow; when I see kings lying by the side of those who deposed them, when I consider rival wits placed side by side, or the holy men who divided the world with their contests and disputes, I reflect with sorrow and astonishment, on the little compe-

titions, debates, ambitions and differences of mankind."

Then came thoughts of Mr. Seward as I knew him in my youth's summer. It was he who made the first legal argument to which I ever listened. I remember how often, when a school-boy, I was attracted to the court-house to witness the legal contests in which he so often engaged. I remember many of his earlier popular addresses, orations and speeches—always scholarly, rich and original in thought, and delivered in diction that had the grace at once of spontaneity and art. I remember even to his very pose, his appearance when he welcomed to Auburn John Quincy Adams, "the old man eloquent," in language that fell like a spell on the vast throng of people who listened to him, and which will ever be regarded as one of the richest gems of American literature. I remember him as he stood the defender of William Freeman, surrounded by a scowling and excited populace, his look, his manner, the deep, impressive seriousness of his features, the startling emphasis with which he enunciated the first sentence in his memorable address to the jury. I remember him as I had seen him in the executive chair of the state, as the senator in congress and as the cabinet minister; but here was the end of all; here, indeed, is taught the lesson that

> "The boast of heraldry, the pomp of power,
> And all that beauty, all that wealth e'er gave,
> Await alike the inevitable hour;
> The paths of glory lead but to the grave."

With such thoughts as these I left the grave of

Seward and soon found myself in the crowded street, where the busy throng was moving on in the eager pursuits of life, forgetful that earth contains a sepulcher and that "the grave lies beyond."

Before visiting the cemetery I accepted an invitation from a friend to visit Owasco lake. A half hour's ride through a beautiful country brought us to the shores of that splendid sheet of water, now gleaming in the sunlight of a delightful August afternoon.

This lake is about twelve miles in length and at some points about a mile wide. Taking the road that winds along its eastern shore we soon reached a point that brought us opposite the Van Ness house, which stands on the western shore.

This house was rendered memorable by the awful tragedy enacted there thirty-one years ago by the negro Freeman. It is a pleasant, comfortable farm-house. There is a quiet, I had almost said a pensive, beauty about the garden and fields, reminding one of the home of Southey and his poetic lake at Derwentwater. Here, in this scene of peace and quiet beauty:

"——withered murder, with quiet steps
* * * * * *
Toward his design, moved like a ghost."

And the whole family, the happy occupants of this house, died by the hand of a dark assassin.

The defense of Freeman, though unsuccessful, was undoubtedly the most brilliant effort of Mr. Seward's professional life. It tended greatly to his future political advancement; indeed it made him a senator in

congress. John Van Buren, then attorney-general of the state, conducted the prosecution of the accused. Though but little has been said or written in commendation of the manner in which he tried the case, it is no affectation to say that the trial and conviction of Freeman was the great triumph of his official and professional career. His address to the jury was one of the ablest ever made in central New York, if not in the State. It was distinguished by profound, industrious research, ingenious arrangement, clearness, precision and force. Some parts of it were indescribably eloquent and thrilling. He had, it is true, the popular side of the case, but after all, had his effort been applied to the unpopular side it would have ranked among the great forensic speeches in legal history. It is to be regretted that no report of it exists. It would have added greatly to the interest of the reported trial; it would have added greatly to the reputation of John Van Buren.

Continuing our drive we soon reached the residence of Throop Martin, on the east shore, embowered amid ancient, stately trees and charming shrubbery. This was occasionally the home of Enos T. Throop, a statesman and politician of the past—once a judge of the supreme court, lieutenant governor, and subsequently governor of the State of New York. Here, fifty years ago, and later, Martin Van Buren, William L. Marcy, Silas Wright and other great politicians who laid the superstructure of the Democratic party, were wont to come to originate and mature those plans of political and state policy which rendered that party triumphant for more than a half century. The old mansion, though

large, is unpretending. It has no castellated battlements, gables and turrets. Some of its rooms still bear the names of some of the illustrious guests by whom they were once occupied. Thus the visitor is shown the Marcy chamber, the Van Buren chamber, Silas Wright's room, De Witt Clinton's room, etc.

The view from the Van Buren chamber presents many varieties of charming scenery, while the view from the other rooms is scarcely less beautiful. Through broad, extended avenues is seen the Owasco, while beyond, in the distance, the hills of Tompkins county appear, forming an enchanting background to the lovely picture. One can easily imagine why the political Nestors—the followers of Justinian, of other days—came to these beautiful places, the realms of Pan, Apollo, the flowery-kirtled Naiads, and of Circe. Not far from the old mansion, in the direction of the lake, there is a handsome residence of more modern architecture, built expressly for Mr. Throop. In front of this building there is a circular arbor, formed of beautiful evergreens, in the center of which stands a large maple, the boughs of which have been so artistically pruned that, like an immense umbrella, it protects the whole area of the arbor from the sun. Here, in summer, Mr. Throop used to take his tea with his friends and guests.

In the year 1824 Enos T. Throop changed his residence from Auburn to this place, calling it Willow Brook, and it still bears that name.

In the summer of 1828 Martin Van Buren, then a andidate for governor, with Benjamin F. Butler, Churchill C. Cambreleng and other distinguished democrats, visited Willow Brook to induce its proprietor,

who had signified his intention to retire from politics, to accept the nomination of lieutenant-governor. With some difficulty they succeeded. At the Herkimer convention, held the September following, Martin Van Buren and Mr. Throop were nominated, the former for governor, the latter for lieutenant-governor. Political anti-Masonry was then in the hight of its power, and its partisans entertained strong hopes of carrying the state, but the artful management of the foxy Van Buren and his plans laid at Willow Brook overthrew them, and the ghost of Morgan could no longer be invoked for political effect.

Hardly was Governor Van Buren seated in the executive chair when he received the appointment of secretary of state in the cabinet of President Jackson, and he resigned the office of governor, Mr. Throop becoming his successor.

In the autumn of 1830 Mr. Throop was again called from this pleasant retreat. He was elected governor of the state. During his administration, Willow Brook was often the scene of many a political scheme that more or less affected the politics of the state and nation.

One cannot wander through the shades of Willow Brook without in some sense realizing the mutability of all earthly things. Jackson, Wright, Van Buren, Marcy, Throop, and finally, all of the leading spirits that made the old Democratic party invincible, are in their graves, almost forgotten, but they have left the impress of their powerful minds upon the history of the nation—they gave dignity to political contests, investing them with the superiority of intellect.

A LAWSUIT TRIED BY LADIES.

How they used legal Authorities.—They are brought to Trial for Practicing without a License.—Description of the Trial.—Result of the Trial.—A Magistrate issues a Warrant Against his own Wife, for Stealing.

THIRTY-FIVE years ago there lived in one of the southern towns of Livingston county, N. Y., a man of the name of Stiles—Rowland Stiles, as he delighted to write his name. He began life poor, friendless and illiterate, but possessing those qualities which, with many, are passports to success in life—shrewdness, energy, conceit and impudence—and, if the truth must be spoken, hypocrisy; and, if the occasion required, downright dishonesty. Like Jeremy Diddler, whenever Stiles found himself in a tight place, as he often did, he called on impudence to defend him, and he seldom called in vain. He was a true type of those mighty good sort of men—those paragons of virtue, morality, religion and temperance on the surface, but arrant knaves at heart—that are found in every community. Assisted by the qualities which have been described and the co-operation of his hard-working and really excellent wife, he managed to prosper in the world. Like many who occupy prominent places, Stiles understood the art of "pushing things," by a sort of dexterous effrontery. Besides, he could look very wise and talk glibly and learnedly concerning matters about which he knew just nothing at all. This was of immense advantage to him, especially in poli-

tics—for Rowland Stiles was a politician, and a good one too. He had the partisan vocabulary by heart. He knew just when the nation trembled on the verge of ruin. In a political discussion his prowess was generally acknowledged. Whenever, on such occasions, he saw that his opponent was gaining the advantage he usually terminated the contest, turning the victory in his favor by rapid garrulity—a continuous fire of thundering words, like the syllogisms of Megara, which by their terrible and unexpected strokes brought all adversaries to the ground.

May it not with some propriety be supposed that the jaw-bone of the ass with which Samson slew the Philistines is only a figure of speech, which, being literally construed, means the jargon, the jaw of politicians? Certainly this construction is quite as reasonable as are very many explanations given to texts of Scripture. Leaving the question with the theologians, it may safely be said that this jargon rendered Stiles a Samson in his way, and as he understood the thimble-rigging procedure of the caucus to the letter he was of great advantage to those far-seeing patriots and sagacious statesmen who usually manipulate county conventions, and in this way Rowland Stiles advanced his own political interest until, in due time, he was known through the region round about him as Esquire Rowland Stiles, justice of the peace. With honors thus thrust upon him he began to exhibit a consciousness of importance, a superiority in his bearing, which proves the truth of the theory insisted upon by certain physiologists, that there exists in man something like a puff-ball, needing only a little prosperity and advancement to distend it to any proportion.

In his court he presided with severe dignity, in a manner that convinced all who entered it that he was every inch a justice.

"Mr. Gardyer," said he one day to a noisy, pompous, wheezing pettifogger who was trying a cause before him, "Mr. Gardyer, you are too noisy. Unless you make less noise I shall certainly commit you!"

"If this court presumes to inflict any such outrage upon me, this court will get its infernal long nose pulled," said the pettifogger, and then matters proceeded as usual in the court-room.

It was curious to hear Esquire Stiles discourse on judges, lawyers, and "law-larning," as he termed legal knowledge.

"Law," he used to say, "is nothing but plain common sense, but it is awfully twistified and snarled up by lawyers, and the judges they don't help the matter much, either. What's a judge, I should like to know, but a lawyer, histed on the bench by the lawyers themselves, so they can have things all their own way?"

It is needless to follow Esquire Stiles through all his judicial career. Suffice it to say he continued to flourish, increasing in wealth, and, as he believed, in honor, until he began to look with disdain upon his former friends and associates. He even began to entertain serious thoughts of running for member of the assembly.

Unfortunately he began to grow oppressive and tyrannical in his own household. Strange enough, his excellent wife became an object of aversion and hatred to him. Mrs. Stiles, as we have already seen, possessed many virtues. All the elements of a good wife were tempered in her kindly and happily. Her mild and

bland temper spread itself over the whole woman, and her whole character received a hue from it, just as a soft atmosphere communicates its own tender, tranquil light on every object viewed through it.

She married Stiles in those happy days when love's young dream was the paramount object of her own life. With her that love was the ruling tenant of her heart, prompting her to every duty, sustaining her in every trial, until her husband's neglect and infidelity wrung her heart with grief. Another woman possessed that love which belonged to her, and the faithful wife—who had stood so bravely by his side in the battle of life, who had contributed so much to his respectability and prosperity—was regarded with hatred, for she stood in the way of the full enjoyment of his illicit love, and he greatly desired to rid himself of her.

He continued to oppress, abuse and insult her, until fears for her personal safety compelled her to leave him. This was the course he desired her to take, but for the sake of appearances he caused an advertisement to be inserted in the county paper, notifying the public that his wife Mary had left his bed and board without any cause or provocation, and that all persons were forbid to trust or harbor her on his account, &c., &c. But as Mrs. Stiles was held in high esteem by all who knew her, as the wrongs she suffered at the hands of her husband created general sympathy, she found protection and a home at the house of a kind lady friend. One day, learning that Stiles had gone to a distant village, she returned to her discarded house and took away her wardrobe and such other articles as she deemed necessary for her comfort.

When the great Stiles learned that his wife had taken what he called his property, his indignation knew no bounds. His wrath was as fierce as the wrath of Bombastes Furioso, when, hanging up his boots, he exclaimed:

> "He who dare these boots displace,
> Must meet Bombastes face to face!
> Thus do I challenge the whole universe!"

For a long time Stiles had anxiously sought some excuse for effectually putting away his wife. He had longed for some circumstance that would throw her into disgrace and destroy her high standing in the neighborhood. When his rage subsided he began to meditate on the course most proper for him to pursue, and he came to the conclusion that at length fortune had favored him, giving him occasion to charge his wife with stealing. He went further; he was determined to convict her of the crime, send her to prison, take to his home another woman, and thus attain the great desire of his heart. Having come to this conclusion he soon acted upon it, for Rowland Stiles was a man of action.

He thought himself fortunate in having knowledge of law. Still more fortunate that he himself was a judicial officer; hence a terror to evil-doers. At this time there lived in his town a pug-nosed, roughish, troublesome pettifogger, one of those legal excrescences who hang around justices' courts, stirring up petty litigation for their own advantage.

This fellow was a creature of Stiles', eminently qualified to the practice in his court—more than anxious at all times to do his dirty work. To this stick of the law,

therefore, the justice now applied for assistance in his plans against his wife. That respectable person soon prepared a complaint in his own name against Mary Stiles, charging her with larceny in felonously stealing, taking and carrying away certain goods and chattels. Having verified it by his own oath, he gravely demanded a warrant of Esquire Stiles for the arrest of the offending Mary. The process was immediately granted and given to one of the Nabem family of the town, with directions to arrest the culprit immediately and bring her into court without a moment's delay.

Armed with the warrant the officer proceeded to arrest Mrs. Stiles. With grim satisfaction he conducted the poor woman, terror-stricken and half fainting, before the frowning Stiles. As she stood trembling before him he glared at her with a ferocious satisfaction, which he vainly attempted to conceal by an ill-dissembled sorrow for the crime which "the prisoner," as he termed her, had committed. In his action and manner he plainly said, "Now, madam, my hour of triumph has come. Your fate is in my hands, and I will effectually dispose of you now. You will trouble me no longer."

At that moment did no recollection of his young manhood—of the days when he wooed and won her, and took her from the home of her childhood, in the joy of youthful affection—come throbbing up from the past, pouring the incense of truth, fidelity and honor over him? Did not that pale, suffering face, that shrinking form, which through so many long years had nestled so lovingly and confidingly by his side, hung over him in so many hours of sickness, make no successful appeal

to his sympathy? Alas! no; for he was changed in all things; blinded by illicit love and the worst passions of his nature, which had now taken possession of him. What had the poor woman to expect from the man before whom she was arraigned as a criminal? Ignorant of law, believing her fate entirely in his hands, visions of dungeons, dark and damp, floated before her eyes.

As for Stiles, such was his anxiety to destroy his wife, he did not pause to consider that in the eyes of the law husband and wife are one and the same—that an authority still higher pronounces them one flesh and one bone. Hence he did not consider that in arresting her he himself, or by far the better part of himself, was also arrested, and he prepared to proceed against her with relentless precision.

When all was ready the case was called, and Stiles in a pompous manner stated to the prisoner the nature of the crime with which she was charged, and concluded by saying:

"Now, prisoner at the bar, what have you to say? Are you guilty or not guilty?"

A kind neighbor and friend of the poor woman now stepped forward, saying:

"She pleads not guilty, sir."

"Begone, sir! how dare you meddle with matters of justice? Your cattle and horses and things need your attention. I should like to know what you have to say about this matter?" said the justice, looking fiercely at his pragmatic neighbor.

"I say this, sir; I am not a lawyer, and don't pretend to have any knowledge whatever about law, but I've got an idea what justice is, and I am going to see

that this woman is protected, and you had better look out how far you go with this matter. I demand that she has time to prepare for the examination," said the man.

Stiles plainly saw by the manner of this man that it would not do to push things to extremities that day. After a short consultation with the pettifogger, who appeared for the People, he said, with much condescension in his manner: "The prisoner can have until to-morrow at ten o'clock to prepare for her defense. Constable, see that she is safely kept, and have her promptly at the opening of court, as we cannot wait, our time is too precious." Then, with a hypocritical sigh, he continued: "How bad I do feel about this matter; oh, how I hope she can prove her innocence; what a tremendous responsibility rests upon me; but I must do my duty though the heavens fall!"

The next morning at the appointed hour, the constable, with his prisoner in charge, appeared before the tribunal which was to decide her fate. The justice was in his chair, pen in hand, ready to take the evidence; the pettifogger was also present, swelling with importance as the prosecuting officer of the occasion. But to the utter astonishment of Stiles and his attorney, all the ladies in the neighborhood, at least thirty in number, accompanied his wife, each one of them with a satchel or basket by her side. When all were seated the justice, rapping loudly on the table before him, announced that the court was ready to proceed. "Are the People ready, Mr. Fangle?" he asked of the pettifogger.

"Yes, your honor, I believe I am, though I was obliged to sit up all night to prepare," said he.

"I shall now proceed to call up the case," said the justice. "The People of the State of New York!" he cried in a loud voice.

"Here!" answered the pettifogger.

"Mary Stiles, the prisoner at the bar!" he again cried in a still higher key.

"Here! here!" screamed half a dozen ladies at once.

"Silence! Prisoner, have you counsel?" asked the justice.

"Yes, we are all of us counsel for the prisoner; she's got plenty of counsel," answered ten or fifteen women in one breath.

"Silence, I say! The court has no objection to your remaining here and witnessing the proceedings of the trial, for it's an important one. Once more I ask, has the prisoner counsel?" said Stiles.

"Yes! yes! yes! we are all her counsel, all lawyers, and we've come to try the case for her," responded the ladies.

"In the name of the People of the State of New York, I command silence!" thundered the justice.

"Go on with the trial, Mr. Justice; we've come to defend the prisoner," said one of the ladies.

"Don't you know that you can't be received as counsel in this or any other court? The Constitution don't permit it; your sex is against you," said the justice.

"No, sir, it's in our favor; we are for our own sex against your cruelty, Old Blue-beard, and Constitution or no Constitution, we are going to defend this woman here," responded the lady at whose house Mrs. Stiles was staying.

"This court declines to hear you! It scorns you! It exhorts you to good behavior! If you don't behave, it will clear the room of you! You are worse than a flock of wild geese! You will be committed to jail," waving his hand with dignity.

"Jail or no jail, we shall try this cause according to law and justice; we've got the law with us, so go ahead," was all the reply he got to his terrible threat.

"Shame on you—you bedlamites! You whey-faced meddlers! You witches! Constable, arrest every one of these women the moment they presume to interrupt the court again," said the magistrate. "Mary Stiles, stand up!" he continued. He was obeyed. "You are charged in this warrant with stealing a quantity of cloth." A volley of white beans poured upon him from every part of the room, filling his mouth and ears and preventing him from finishing the sentence.

"Of—ofi—constable! constable!" he roared, as soon as he had ejected the beans from his mouth. "Arrest these Jezebels! Arrest them, I say, and take them out of the room."

"See here, Mr. Constable," said one of the ladies, "if you know when you are well off and safe you will keep still. You have no right to interrupt counsel when they are trying a cause."

That respectable functionary took the hint, and for once in his life declined to obey the mandates of the great Rowland Stiles. After wiping his smarting face, with his handkerchief, the justice once more cautioned the ladies against interrupting the court; then, addressing himself to the prisoner, said:

"Mary Stiles, you are charged with having on the 25th

day of Septem—" another shower of beans discharged full in his face with stunning effect again interrupted him. Springing up and gasping for breath, he cried, "Off—of—offi—constable ! arrest these ha—ha—hags, these—these—arrest them, I say. No ! No ! read the riot act! read it quick! disperse them! or damn 'em, they'll confound this court!" screamed the justice.

But the constable, who was closely ensconced under the table with the attorney for the People, did not regard this command ; and so Stiles adjusted himself as best he could, and once more sternly commanded the ladies to keep still or suffer imprisonment, and proceeded to swear the first witness ; but before he raised the Bible a foot from the table another tremendous volley of beans nearly knocked him out of his chair. And now the ladies, whose baskets and satchels contained plenty of ammunition, like well-drilled veterans in a general engagement, loaded and fired at will. Volley followed volley in quick succession, then came the steady roll of continued discharges. From right and left, from every part of the room, the swiftly-hurled missiles poured upon the head of Stiles ; so hot and rapid was the fire he could hardly catch his breath. Grasping a law book, he held that before his face to shield him from the impending beans. But the book was snatched from him, and they seemed to fly with redoubled fury, causing the justice to jump and caper about like a negro in a clog dance, exclaiming :

"I—I—I—com—com—I command the peace, of—offi—officer. Gentlemen! good citizens! help keep the peace! help clear the room of these she dev—" A handful of feathers crammed into his mouth effectually pre-

vented his finishing the word, and his voice subsided into an internal muttering of strange sounds, which rolled and grumbled, sputtered and rattled in his throat, like the moans and shricks of a choked hound.

The attack had now become too fierce for him to withstand any longer, and half suffocated with feathers, and smarting from the effects of the beans, he rushed for the door, followed by the constable and pettifogger, leaving the ladies in quiet possession of the court-room. One of them, assuming the vacant chair of the justice, and calling the assembly to order, said :

"Ladies, we're now mistresses of the situation—in full possession of the so-called court of justice ; let us now make it so in fact. Let us see whether any person appears against the prisoner at the bar." Then raising her voice, she called out : "The People of the State of New York ! No one answers, and therefore, according to law, the complaint in this case is abandoned. Therefore, Mary Stiles, prisoner at the bar, by virtue of the statute in such case made and provided, I discharge you from arrest, and declare you free to go and come as you please."

Judgment having been thus rendered in favor of the defendant, she left the room, surrounded by her numerous counsel. So strong was the *vox populi* in her favor that Stiles never arrested her again. But as he possessed a will of iron, he determined to punish the ladies who had thus rescued his victim from his hands, and appearing before the grand jury of Livingston county he procured an indictment against them for riot, assault and battery, and for disturbing the proceedings

of a court of justice. Hon. George Hastings was then district attorney.

As the offense with which the ladies were charged was very serious, and would, if sustained, subject them to a severe punishment, they prepared for a vigorous defense, and John B. Skinner was retained to defend them. Mr. Skinner was then in the zenith of his brilliant professional career. At this period he was, perhaps, the most successful and impressive legal orator in western New York. He had at his command the eloquence of imagination, fancy and high-wrought feelings, but brought within the range of a well-disciplined and well-organized mind. His learning, candor and integrity gave him the confidence of courts and jurors to such an extent that opposing counsel often complained that it was his influence, not the justice of his cases, that rendered him so successful. It is certain that the ladies could have committed their defense to no abler man. In due time they were brought to trial, at a term of the Livingston Oyer and Terminer, before the late Judge Monell, and the judges of the Livingston Common Pleas. The singularity of the offense, the number and sex of the prisoners, gave great interest to the trial. To insure the conviction of the accused, Stiles at his own expense retained able counsel to assist the district attorney. Stiles was, of course, the principal witness for the people. In his direct evidence he made a strong case against the ladies. But Skinner's cross-examination was really a legal thumb-screw, a species of torture that wrung from the reluctant Stiles a full confession of his cruel and oppressive treatment towards his wife and his infidelity to her. It compelled him to

acknowledge that he had no just cause of complaint against her; that to escape his brutality she had been compelled to leave his house and seek protection from the neighbors, and finally, as a crowning act of his cruelty to her, he had, as a magistrate, issued a warrant against her, causing her to be dragged before him as a common criminal, with the intention of imprisoning her in the county jail, and he sat in the witness-box a shivering, cowering, despicable being, condemned by the words of his own mouth.

Other evidence was produced, and the counsel for the prosecution made an able effort to convict the ladies, and they presented the case to the jury with great ability. Mr. Skinner's address to the jurors, though very brief, was a model and successful argument. He sought no felicity of phraseology, but came directly to the points in the case. With that pungent sarcasm of which he was a perfect master, he lashed Stiles until he was an object of scorn to all in the court-room. He contended that, as a matter of law, the justice acting in his official capacity had no jurisdiction over his wife, and hence all proceedings under his warrant were null and void, and therefore the ladies were justifiable in rescuing Mrs. Stiles from her illegal arrest; that in so doing they used no more force than the necessity of the case required, and that there was no evidence in the case tending to show that the ladies had assembled for the purpose of any riotous proceedings. After an able, fair and clear charge from the judge, the jury retired, and soon returned into court with a verdict of not guilty. The announcement of this verdict produced a burst of ap-

plause, and the ladies left the court-house with the congratulations of their friends.

The attempt made by Stiles to try his wife for stealing was his last official act. Like Cardinal Wolsey, he fell in the midst of his full-blown greatness. Like Wolsey he might have exclaimed, "In that woman I have lost all my glories."

Soon after the trial of her friends Mrs. Stiles commenced an action for divorce against her husband, in which she was successful, taking from him, by a decree of the court, a large portion of his property for her maintenance. Converting the remainder of his property into money, Stiles, with his paramour, left the country, vanishing away like guilty phantoms. In what part of the world they hid themselves has never been known. Time has swept away most of the actors in the scenes described in these pages, but there are those still living in Springwater, N. Y., who have a vivid memory of the famous trial of Mrs. Stiles and her defenders.

ORDEAL OF BLOOD.

A Dark Superstition invoked to Detect a Murderer.—What It Declared.—Famous Trial of Medad McKay for the Murder of his wife.—Brilliant Array of Counsel.—Hair-breadth Escape.—The Missing Seal.—Effect of Outward Circumstances on Juries.

IT is seldom that the history of crime records more singular and startling circumstances than were revealed in the trial of Medad McKay. In many respects he was a singular man, destined to pass through strange ordeals and trials. There were times when he seemed under the control of mysterious agencies, times when he felt a consciousness that something not of earth was behind him, times when "coming events cast their shadows before," and he would be moved by impressions as gloomy as those embodied by Coleridge in his beautiful but weird verse.

When McKay was charged with a horrible crime he invoked a superstitious ordeal, full of horror, the result of which cast a dangerous shadow upon him when tried for his life. And yet his fate was not always controlled by dark and malignant spirits. In one awful hour of his life an invisible hand seemed suddenly to reach forth and snatch him from the grave. The superstitious termed this intervention the work of his guardian spirit; the more enlightened attributed it to the ability, skill and eloquence of the gifted lawyers by whom he was defended.

Early in the year 1820 Medad McKay removed from the county of Cayuga to Burns, in the county of Allegany. He had enjoyed many advantages for attaining an education, which he did not neglect. Reading was his favorite pastime, and he loved to plunge into the dark and metaphysical subtleties which the Germans have called daringly forth. But he possessed a desire for knowledge more vague than useful.

At the time of his removal to Burns he was thirty-five years old. A wife, four children, one or two hired men and a servant constituted his family. Unfortunately he lived unhappily with his wife. So deep and bitter was their quarrel that the neighbors frequently interposed to prevent McKay from inflicting personal violence upon her. At length Mrs. McKay was attacked by a sudden and strange malady which soon terminated fatally.

Many circumstances connected with her death caused the people in the neighborhood to believe that it resulted from poison administered to her by McKay. So strong was this belief that soon after the funeral of the unfortunate woman he was arrested, her body exhumed, the contents of her stomach subjected to a chemical analysis, and arsenic detected. At the coroner's inquest, called to view the body and decide upon the cause of the woman's death, an event of thrilling interest occurred, which, in the minds of many, confirmed belief in the guilt of the accused and operated against him on his trial. McKay did not deny that his wife died from the effects of poison, but he insisted that he had no complicity whatever in the act of administering it to her. She had for years been at variance with one of her sis-

ters who lived near, and McKay accused this woman of the murder of his wife.

McKay had read of the "Death Touch, or the Ordeal of Blood," a dark, Druidical superstition, so graphically described by Sir Walter Scott in his enchanting story, "The Fair Maid of Perth." This ordeal originated in the belief that if a person guilty of murder touches the neck of the victim with the index finger of the left hand, blood will flow from the place where the finger rests, in evidence of guilt.

It was, doubtless, this belief that prompted the conscience-stricken Macbeth, after he had murdered Duncan, to exclaim:

> "Blood will have blood!
> Stones have been known to move and trees to speak:
> Auguries and understood relations have
> By magpies, ravens and rooks brought forth
> The secreted man of blood."

This ordeal or test McKay proposed should be tried at the inquest by his sister-in-law, alleging that it would decide who was the guilty person; but she declined. He then insisted upon trying it himself. "I insist," he said, "upon being permitted to subject myself to the test of blood, for it will, I hope, convince the public that I am an innocent man, for if I am guilty my wife's blood will follow the touch of my finger."

The coroner gave his consent, and in the presence of the multitude, amid profound and ominous silence, the suspected man approached the dead body of his wife and placed his finger on her neck. When he withdrew it a dark, bloody spot marked the place where it had rested. There indeed was the "gout of blood which was not there before," the avenging spot "plead-

ing trumpet-tongued against the deep damnation of her taking off."

McKay had resorted to the test of blood, and it pronounced against him in the blood of his victim. In an instant a ghastly pallor overspread his face. Cold perspiration stood in great drops on his forehead; his heart almost ceased to beat, and, tottering half fainting into a chair, he exclaimed:

"Oh! oh! there's the blood! there's the blood! the blood! the blood! Oh! my God! my God! there's the blood! but I—I did not do it! I did not do it! I did not! I did not! But oh how shall I escape? for there's the blood!"

Burying his face in his hands, his frame shook and trembled with emotions that were terrible to behold. Any attempt to describe the effect of this scene upon the spectators would be useless. Had an accusing angel spoken from the skies, or the lips of the dead woman suddenly become voluble, the people could not have been more astonished and startled. To the superstitious this circumstance established the guilt of McKay by proof "as strong as holy writ." But to the more enlightened, to the physicians present, there was a natural cause for this apparently supernatural occurrence.

The corpse had been in the grave two days at least. The part touched by McKay was swollen and tinged with a miliary eruption which rendered the skin soft and yielding to the touch. The man undoubtedly pressed his finger upon the part with some force, causing it to slip from the side of the neck, removing the skin, thus revealing a bloody matter that had gathered

under it. This was the explanation reason gave, but it was useless to urge it in explanation to the excited people present. They had heard the prisoner appeal to the awful test, had witnessed the bloody proof of his guilt, and the Touch of Death—the Ordeal of Blood—ran like wildfire through the country.

Soon after this event McKay was indicted for murder, and in June, 1820, his trial took place at Angelica, New York, before the Court of Oyer and Terminer. Ambrose Spencer, then chief justice of the State, presided. The career of Judge Spencer as a judge places his name among the great judicial officers of the nation. On the bench he was grave, dignified, impartial, though often almost imperious. He held counsel to a close consideration of the case under argument, permitted few of those light efforts that strive after effect alone; none of those excursions which produce sensation by a smart antithesis or theatrical flourish.

The prosecution was conducted by John A. Collier, a name that has added luster to the legal history of the State of New York.

Vincent Matthews, of Rochester, N. Y., and John W. Hurlbert, appeared for McKay. Both of these lawyers stood at the head of the profession. The latter, Mr. Hurlbert, attained a renown so high that in legal history he is styled the Curran of America. The great judge who presided at the trial; the eminent counsel who appeared for the respective parties; the strange circumstances connected with the case, gave the trial of McKay a deep interest.

It was long and tedious, disclosing one of the most wonderful escapes from the gallows on record.

The whole science of toxicology pertaining to arsenious acid, or white arsenic, was examined. As McKay was charged with killing his wife by this poison, all the phenomena attending its operation on the human system were inquired into, leading to many interesting medico-legal questions. Learned and experienced professors of chemistry skilled in nice analytic tests were examined and cross-examined.

The suspicious conduct of McKay before and during the illness of his wife was proved. There was also proof introduced by the prosecution tending to show that the accused purchased arsenic of a druggist in a neighboring village a short time previous to the illness of his wife. The prosecution, however, could obtain no further proof on this point than the fact that the accused had, a day or two previous, purchased some medicine of this druggist. Neither party could prove the nature of the medicine, as the druggist could not, or would not say whether there was or was not arsenic sold to McKay on that occasion. Some strange and threatening language concerning his wife was proved to have been uttered by the prisoner. For motive prompting him to the act, the unhappy relations between him and his wife were proved. The people proposed to give in evidence the conduct of the prisoner, and the test of blood which occurred at the coroner's inquest, but this was ruled out by Judge Spencer.

Hurlbert and Matthews exerted all their powers in the defense of their client. The blood spot on the neck of the deceased following the touch of McKay had prejudiced the community strongly against him. This, joined with the other strong circumstantial evidence

against him, rendered the defense apparently desperate.

Hurlbert's cross-examination of the professional witnesses was conducted with so much ability, was balanced and pointed with so much medical and chemical knowledge, that to those unacquainted with him, the lawyer seemed at times to be lost in the doctor of medicine or the professional chemist.

His address to the jury was one of the ablest efforts of his long and distinguished career at the bar. Always laborious in preparation of his materials, luminous and forcible in their arrangement and use, strong in argument, deep in thought, critical in the analysis of the evidence, he was peculiarly happy in the application of all these qualifications to the defense of his client.

The argument of Mr. Collier was equally powerful. As a legal orator he possessed that mysterious power sometimes called magnetism. An attractive delivery secured him the attention of his hearers. He seldom indulged in superfluous flights of eloquence; but if there was anything in the range of legal literature he desired to use in his argument, he always had it in its appropriate place, using it with much of the elegance of Choate and the logic of Webster.

Collier dwelt with startling emphasis on the enormity of the offense, on the ease and secrecy with which it can be committed, and wove into his argument with great effect the history of the Italian poisoners, and the fatal but mysterious manner in which they murdered their victim by subtle poison. He contended that very many of the sudden deaths that occur are the result of some potent but subtle poison. He pictured with thrill-

ing effect the anguish of the dying woman, tortured with internal fires, burning with unquenchable thirst, and racked with fearful convulsions, the husband of her youth—her natural protector—watching with indifference her dreadful suffering, coolly awaiting the time when the poison he had administered to her should do its fatal work.

In commenting upon the test of blood he did not seize the superstitious views of that circumstance. He contended that McKay himself did not believe in the test, but proposed it for the purpose of inducing the people to think him innocent since he dared to invoke it so boldly.

"Gentlemen," continued Mr. Collier, "it was not the blood of his victim that followed his murderous hand, revealing his guilt on the way. The sight of the corpse of his murdered wife touched his conscience. It was conscience, that sure and awful accuser pursuing him with sleepless vigilance, that caused the cry of agony and remorse, the pallor and the tremor. His guilty secret was disturbed, and like a raging devil within him, it compelled him by his actions and words to confess his guilt even while attempting to deny it."

After an able and lucid charge from the judge the case was given to the jurors, who, after several hours' absence, returned into court with a verdict of "guilty."

As the words of the verdict fell from the lips of the foreman, McKay with a cry of agony fell fainting to the floor. He was with some difficulty restored to consciousness, and remanded to jail until he gained sufficient strength and fortitude to undergo the awful sentence.

He was brought into court the next morning. Collected and firm he took his seat in the prisoner's box; all evidence of the weakness and terror that so suddenly overcame him on the announcement of the verdict had passed away, but the lines around his mouth—the unmistakable figures in which mental suffering writes itself—were visible to all. But there was no forced and convulsed effort vainly masking the terror and the pang. He had brought himself to submit to his fate with a courageous but despairing heart.

Mr. Collier moved that the sentence of the court be passed upon the prisoner.

"Medad McKay," said Chief Justice Spencer, in that voice which once heard was never forgotten, "what have you to say why sentence of death should not now be pronounced upon you?"

To this question McKay replied: "I have nothing to say, except I am not guilty. I could say more, but it would do no good."

During this scene Mr. Hurlbert was seated at a table on which the papers of the district attorney lay in a loose bundle, and his eye accidentally rested on the writ by which, in those days, the jurors were summoned. Carelessly taking up the paper he glanced at the filing and laid it on the table again. In this movement the writ became partly unfolded, revealing the caption on the inside. Rapidly running his eye over this he discovered that the seal of the court, which the law then required should be affixed to the document, was missing. With nervous energy that attracted the attention of many within the bar, he seized the writ

again. Hastily reading it over, with a strange startling expression on his face, he sprang to his feet just as the judge commenced the death sentence, and the voice of John W. Hurlbert fell upon the almost breathless audience like a clap of thunder at noon-tide exclaiming:

"Stop, your honor! for heaven's sake stop! I desire to be heard before your honor proceeds!"

The chief justice paused. His heavy brow darkened. With a look of surprise and indignation he said, "What is the meaning of this interruption, sir? Do you, Mr. Hurlbert, do you intend to trifle with this court? And at this time? I am astonished, sir!"

"I never trifle with any court, sir—never, never. I hold your honor in too high esteem to oppose here a factious word or objection, but a matter has this moment come to my knowledge to which it is my duty to call the attention of the court, and I beg your honor to hear me. The issue of life or death hangs on what I desire to say."

"The court will hear you, sir," said the judge, in a softened voice.

"I hold in my hand," said Mr. Hurlbert, "the writ by which the jury in this case was summoned here, and that writ has no seal of the court affixed to it, and I believe, sir, that this renders all the proceedings of this trial null and void. I therefore desire to move in arrest of judgment at this time."

The manner in which the judge listened to the counsel exhibited the emotion which it caused him; while the counsel for the people, startled and astonished, gazed at the writ.

Judge Spencer took his seat, and leaning his head

upon his hand remained a few moments in deep thought.

To the bar and spectators the scene had become one of intensified interest, and the silence of death prevaded the court-room.

McKay still stood in the prisoner's box lost in wonder. Hope seemed springing suddenly from the very caverns of death, while the form of his counsel appeared to him like the angel of deliverance snatching him from the gallows.

"Great God!" he thought, "is my life to be spared after all? The scaffold! the halter! the death struggle! the cold damp grave! the creeping worm! Am I to escape all these horrors!" And in imagination he was again in those fields were all those things are free. He was brought back from these reflections by the judge who directed him to take his seat.

"What answer have you to the point now raised by the defense, Mr. Collier?" asked the judge.

Collier, though taken by surprise, and evincing some nervousness, gave able answer. He insisted that, as the prisoner had appeared and challenged the jurors without making the absence of the seal to the writ a ground of challenge, he had waived all objections. Again, by proceeding to trial without raising this objection in any form, he had waived all error.

On the other hand, the counsel for the defense contended that nothing could be taken against the prisoner by implication, and it could not be presumed that he had waived any of his rights; that as this was a capital case the want of seal on the writ could not be cured by stipulation; that writ without a seal was no venire,

consequently the prisoner, though he had been tried before twelve men, had not been tried by a jury, hence his conviction was a nullity.

The judge decided to suspend the sentence of McKay, until after the determination of the question at a general term of the supreme court, and he was remanded to jail.

The case was removed to the Supreme Court by a *certiorari*. It was argued in Albany in 1820. Thomas J. Oakley, then attorney-general, appeared for the people, and John L. Talcott conducted the case for the defense. After arguments of surpassing ability and power, the verdict against McKay was set aside. Chief Justice Spencer, in an able opinion, sustained the position assumed by the counsel for the defense, and directed a new trial.*

On the 20th October, 1820, McKay was again brought to trial. After another long and tedious contest he was fully acquitted upon grounds almost as providential as those which saved him on the first trial.

Before the second trial occurred, the impression made on the public mind by the spot of blood—the touch of doom—had faded away, and he was tried without the superstition that shadowed forth his guilt.

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* The proceedings in this case, in the General Term of the Supreme Court, are reported in 18 Johnson, 212.

ALEXANDER HAMILTON AND CHIEF JUSTICE PARSONS IN THE COURT-ROOM.

A Chance Shot.—Recollections of Erastus Root.—An Illustrious Statesman of the State of New York.—A Break-Down in Congress.—Great Libel Suit.—Root *v.* King and Verplanck, Editors of the New York *American*.—Judge Betts on Newspapers.

GENERAL ROOT was present at the trial of the celebrated Halsey land action, that took place at Hartford, Conn. In this suit Hamilton was opposed by Theophilus Parsons, afterwards chief justice of Connecticut.

"The Connecticut lawyer," said Root, in a letter to a friend in New York, "is a perfect walking law library, with copious notes and a full index. He is as technical as he is learned; his subtle distinctions, and nice logic, enabled him to expound, with admirable force and perspicuity, the rules controlling titles to land, the profound distinctions of the law of real property, and all the doctrines which govern the devolutions of estates, and the interpretation of devises. The intricacies of the English law on these subjects were perfectly familiar to him, and he often pressed his great antagonist, as no other lawyer is able to. But the latter, to use the language of another, sowed his arguments broadcast, amplifying them by every variety of illustration of which the subject admitted, deducing from them a connected series of propositions and corollaries, gaining in beautiful

gradation on the mind, and linked together by a strong chain of reasoning.

Parsons succeeded in the case, by turning, with great ingenuity and learning, Hamilton's main point, one that had cost him much study and research to elaborate, and which he regarded as impregnable.

"I have known," said Hamilton, "lawyers to split a hair. I may have tried to do so myself, but I never saw a person decimate a hair and count the pieces in presence of the court, until I saw Theophilus Parsons do it in the Halsey trial."

The next day after the trial both lawyers dined with a mutual friend. At table the conversation turned on the suit they had just tried. "Parsons," said Hamilton, "that point was fairly turned by you, but it cost me much study. I did not believe it could be answered. But you seemed fully prepared for it. Tell me, candidly, had you anticipated it?"

"Not in the least. As long ago as I was a student, the question was suggested to me by a fellow-student in a sort of accidental manner. I looked it up, made a note of it in a place-book which, by the way, I always carry with me. When you raised the question, I thought I had an answer for it; so, turning to my place-book, I found a note of it and sent for the volume containing it, produced it, and succeeded against an antagonist, give me leave to say, whom I dreaded as much as I respected; but I overturned you, General Hamilton, by a chance shot, only."

"No, sir, by fixed ammunition and at long range," was the courteous reply.

On the 5th of December, 1831, General Root and John

A. Collier took their seats in Congress. The former had represented his district in that body many years, and of course was a veteran in congressional tactics. But Mr. Collier had never before been a member of a parliamentary body, though, as we have said of him on another occasion, he was one of the leading lawyers of the state, a walking digest of law, a real chieftain in the legal arena. Notwithstanding his legal abilities, his maiden speech in Congress was a failure.

The session had advanced but a few weeks, when a question came before the House, in which Mr. Collier was deeply interested. It was understood that he was to answer a member who was opposed to it. Accordingly when he took his seat Collier arose, and said in a tolerably firm voice, "Mr. Speaker!" "The gentleman from New York," said the Speaker, bowing—but a mist began to gather before the eyes of "the gentleman from New York." Pausing a moment, and making a powerful effort to "screw his courage up to the sticking-point," he again exclaimed, "Mr. Speaker!" "The gentleman from New York," was the response. But another embarrassing pause followed; the House was silent as the grave. All eyes were turned upon the new member, and he felt benumbed by the several hundred eyes for which he was a target. Taking his handkerchief from his pocket, he wiped away the perspiration which now stood in large drops on his face, and again exclaimed, "Mr. Speaker!" "The gentleman from New York," said that official, with a slight smile on his countenance; but the gentleman from New York was still silent; casting a furtive glance around him, he saw on every side members ready to burst with laughter at his ex-

pense, but all power of speech seemed denied him. Turning around he discovered Root, who had taken a seat near him, when he rose to speak : "General," he said, in a low voice, "I have got the Speaker's eye, but I wish it was a knot-hole, and that I was fairly in it." Turning again to the Speaker, he said : "Mr. Chairman, I shall leave the subject with the remarks I have made," and took his seat amid the laughter of the members.

"What had I better do, General Root ; resign and go home ? I have made a perfect failure," said he to Root, after the House adjourned that day.

"Do no such thing ; at the bar you have a cheek like a graven image, the impudence of a tin peddler, the assurance of a traveling preacher. I should have believed a sign-post would have blushed and faltered, as soon as you, on the floor of Congress. Go home ? No, sir ; you have confidence enough, and abilities of the highest order, if you will only use them. You will yet become a leading debater here. If you had come here and rattled away like an auctioneer, or made a flaming speech, as some new members do, there would not be half the hope for you that there is now. Fools never blush nor falter," was the reply.

General Root was right ; long before Mr. Collier retired from Congress, he was regarded as one of the ablest speakers in a body then composed of men of much more than ordinary eloquence.

In the year 1822, Erastus Root was elected Lieutenant-Governor by the Democratic party. "As President of the Senate, he possessed a very powerful influence in the distinguished body over which he presided, and his

influence in the legislature, and throughout the State, was never greater than at this time."

But brilliant, able, eloquent and influential as he was, he was unfortunately addicted to the use of intoxicating drink to an extent that gave his friends much uneasiness, though, as is usual in such cases, this habit was greatly exaggerated, affording his enemies an opportunity to attack him with some effect. One of their attacks made upon him, led to the great libel suit against King and Verplanck,* then the editors of the New York *American*.

While Root was Lieutenant-Governor a change in the electoral law was proposed, causing the most intense excitement throughout the State.

The proposed amendment was blended with the memorable presidential conflict, in which Adams, Clay, Calhoun, Jackson and Crawford were candidates for the chief magistracy of the nation.

On the 24th of August, 1824, the Assembly sent a resolution to the Senate, declaring the expediency of passing, at that session, an electoral law. The nature of the law was briefly defined in the resolution. A motion was immediately made by a Senator, that the Senate concur in the resolution. For a few moments there was a profound silence, broken at last by the President, who arose and delivered an eloquent opinion, in which he gave his reasons for declaring the resolution out of order. He spoke at some length, and perhaps never more logically or effectually. When he first commenced

* Reported in 7 Cowen's Reports, 613 ; 4 Wendell's Reports, 113.

speaking there was an embarrassment and hesitancy in his manner quite unusual. This, as will be seen hereafter, was taken advantage of by his enemies in their charge of ebriety.

The resolution was rejected, and immediately the federal papers throughout the State opened their batteries upon the Lieutenant-Governor, some of them strongly hinting that he was intoxicated when delivering his opinion. The Albany *Argus*, then as now a leading Democratic journal, in an ably-written review of the speech, firmly, but courteously, repelled the charge of intoxication. Whereupon the New York *American*, an eminent Federal paper, printed in the city of New York, took up the case, charging in strong and pointed language, that Gen. Root was intoxicated, as had been alleged by several papers, and that the *Argus* knew it.

"We speak only what we saw; and as it is a matter of some public concern that the presiding officer of our Senate should not continue to be what Mr. Root is, we speak without hesitation or reserve," said the *American*. The writer then proceeded to describe the condition of Gen. Root, as he appeared when he delivered his speech, insisting that when he advanced towards his chair, through the center of the Senate-chamber, there was in his appearance, manner and walk, something that excited every one's observation. "He reached his station, however," continued the writer, "and, calling the members to order, informed them that there was a message from the Assembly, which the clerk then read. A dead silence ensued; Lieutenant-Governor Root, holding on to each arm of his chair, looked around with inflamed face, with blood-shot eyes, and with a drunken expres-

sion, that under other circumstances could not have failed to excite the derision of all present.

"He was expecting some motion previously concocted to enable him to pour forth the diatribe with which he was laboring; but none such was made, and he therefore was compelled to remark, 'the chair has no observation to offer, unless some motion be proposed.' Thereupon it was moved by Mr. Burt, or some one opposed to the faction, 'that the Senate concur in the resolution sent from the Assembly.'

"This furnished the spark to the combustible smoldering in the breast of the Lieutenant-Governor; instantly he essayed to rise, and by the all-important aid of the arms of his chair, and his desk in front, he did rise and stood for a moment as in preparation, silent before several hundreds of his fellow-citizens, an object, from his appearance and manner, we will venture to say, of loathing and disgust to every unprejudiced man among them." The writer then continues to give a passionate and distorted description of Mr. Root's personal appearance, exhibiting the bitter warfare which politicians of that day waged against each other.

But the real cause for this bitter attack crops out in the following language: "It is known that the presiding officer of this body has no other than a casting vote, and no right at all to speak. He may, however, assign reasons for any decisions he makes; and under this shallow pretext Mr. Root uttered a long and labored vindication, not only of the course he was about to take, but of the whole course of proceedings of the Senate; and then launched forth into a regular philippic against the Governor and Assembly. . . . It was the harangue

of an intemperate demagogue, blind with passion and rum," &c. &c.

Immediately after the appearance of this singular article, General Root commenced an action against Messrs. King and Verplanck, the editors of the *American*, for a libel. They interposed a plea denying the charges in the plaintiff's declaration, and, in accordance with the practice at that time, with this plea gave notice that they would on the trial give the truth of the matters charged as libelous, in evidence, in justification, with other matters of defense. In other words, they proposed to prove on the trial the entire truth of the article we have quoted.

The trial took place at Delhi, N. Y., in June, 1826, before Hon. Samuel R. Betts, then one of the circuit judges, and a jury. The magnitude of the case, the distinguished position of the parties, the brilliant array of the legal talent it summoned to the forum, gave it great importance throughout the entire nation.

John Suydam, one of the most eminent lawyers then at the bar, assisted by that widely-renowned advocate, Elisha Williams, appeared for General Root. J. Blunt and D. B. Ogden, no less eminent and learned than their opponents, appeared for the defendants.

A large number of witnesses, among whom were Senators, members of Assembly and other prominent men, were examined, as well for the defendant as the plaintiff. Every effort was made to prove the words in the alleged libel true, while, on the other hand, all that legal skill and nice management could do to shield General Root from the attack upon his character, was resorted to. It is curious to note how the battle fluctuated be-

tween victory and defeat. One of the strong circumstances relied upon by the defense to prove the intoxication of Root, was the high flush that appeared on his countenance during the delivery of his speech. This was ingeniously but fully answered by proving that at the time of making it, there were two windows with crimson curtains at the west side of the Senate-chamber, that the light of an afternoon sun shining through these curtains threw a red hue upon the face of Root, giving it an inflamed appearance. Other witnesses testified that in their opinion this appearance was produced by the effort of speaking on a warm summer's day. On the other hand witnesses testified that they noticed his red or inflamed face before he went to the Senate-chamber. Others testified that the hesitating and labored manner in which he spoke, convinced them he was intoxicated. Others that the general expression of his countenance was that of a drunken man. While others testified that his manner was more calm and deliberate than usual, apparently as if adopted with a view to render his ideas perfectly explicit and well-understood. One gentleman of high character and standing testified that a short time before the session commenced that day he was in conversation with the General, and that he was perfectly sober, but more thoughtful than usual. Another, that he saw him at his hotel just before he went to the Capitol, and observed that he was very pale, apparently from ill health. There was a singular accumulation of evidence on the appearance of Root on that memorable occasion, but in the end the weight of evidence was in his favor.

The defendants, however, contended that they had

made out a complete justification. They insisted that their occupation and the plaintiff's official station—the article itself, and the proof offered in support of its truth, made out a sufficient justification of the alleged libel, showing a good and sufficient motive for its publication. That as public journalists, representatives of an independent press, it is their duty to criticise the manner, acts, and appearance of all public men; that this duty, properly observed, tends to the advancement of truth, science and morality, in its diffusion of liberal sentiments on the administration of government, shaming and intimidating oppressive, dishonest, and venal officers into a more honorable and just mode of conducting public affairs. That the general belief among the spectators present when the Lieutenant-Governor pronounced his opinion, was that he was intoxicated; that this sustained them; and, finally, that by the belief of the defendants in the truth of the charge, the malice of the publication was taken away, and nominal damages only could be awarded.

On the other hand it was contended, adopting the language of Hamilton in the great libel case of the People *v.* Crosswell,* that although the liberty of the press consists in the right to publish, with impunity, truth, with good motives, for justifiable ends, though reflecting on government, magistracy or individuals, the allowance of this right is essential to the preservation of free government; still, when such publication refers to the character of persons, the publishers are re-

* Reported in 3 Johnson's Cases, 342; Chancellor Kent's opinion, 3 Wheeler Cr., 330.

sponsible for the truth of the publication; that though malice is the *gist* of the action in suits for libel or verbal slander, it does not mean ill-will towards the individual affected; that malice is an implication of law from the false and injurious nature of the charge, and differs from *actual malice* or ill-*will* towards the individual, frequently given in evidence to enhance damages. It was also contended that the defendants wholly failed to establish a justification, and that nothing remained for the jury to do but assess the damages. There were other points submitted on both sides, that time will not permit us to state. The charge of Judge Betts to the jury in this truly great case, was one of the ablest expositions of the law of libel, of privileged communications, of the belief of defendants in the truth of the publication, of malice as an implication of law, and of actual malice or ill-will towards the individual; stating that malice in making a charge, so far as libel is concerned, need not be proved; that it will be implied if the charge is false. In speaking of the press he said, "a trust of the most interesting and important character subsists between the public and conductors of the press. It is that nothing but correct, useful and wholesome matter shall be circulated, especially that no other shall be given upon the personal knowledge of editors. In the present state of society, newspapers have become elementary works of instruction; they are admitted into families, and pass from member to member with the same unreserve that school-books and books of worship are. They furnish aliment to youthful thought and taste; they make public opinion; they enliven, elevate and refine when properly conducted; but when

badly conducted, they contaminate and befoul. Few think of inspecting a newspaper before allowing it to be read in the family circle, while other works are subjected to a severe examination before they are admitted there. The Psalm Book, the Prayer Book and even the Bible are not more freely used in our families than are newspapers. How important, then, it is that they should be free from coarse and approbrious sentiments —from exhibition of bad passions or scurrilous revilings of those with whom editors chance to be at variance. . . . Few can withstand the attacks of the press when its power is directed against private character. What is the appeal? Who listens to the cry of innocence or regards the pain inflicted on the sufferer or his unoffending relatives? It can only be done by visiting with severe damages him who wantonly assails the character of another through the public newspapers."

The judge further said to the jury, "that if the publication admitted to have been made by the defendants held the plaintiff up to reproach or disgrace, either in his public or private character, it was a libel. That malice need not be proved; that it would be implied if the charge was false." He further stated, "that the publication was libellous, and the contrary had not been contended for on the part of the defendants. But they asserted its truth; if it is true, this amounted to a perfect answer and full defense, and the defendants are not liable, even though their motives might have been ever so malicious. But the defendants are bound to prove the whole charge satisfactorily; that the justification must be co-extensive with the libel; that as the defendants had stated what they meant by drunken-

ness, they were bound to show that the plaintiff's situation was such as they described it." These were some of the comments of the judge to the jury. There were exceptions taken to many parts of this charge, and finally the case was given to the jury. They were out all night. In the morning they came into court and requested instructions as to the proof of general character, which might be received in mitigation of damages. The judge said to them that "the defendants may not give evidence of general character as to temperance, in mitigation, unless of the same quality and degree charged in the libel." This was excepted to by defendants' counsel. The jury then retired, and after a short absence returned into court with a verdict of one thousand four hundred dollars.

The counsel for the defendants took the case to the Supreme Court on a bill of exceptions. It was argued at Albany in August, 1827. At the October term following, a decision was handed down, affirming the judgment, with costs. The opinion was written by John Savage, then Chief Justice of the State, and concurred in by all the members of the court.

But the matter did not rest here. The indefatigable counsel for the defense, believing in the justice of their case, took an appeal to the court for the correction of error, then the court of last resort in the State. This court was composed of the members of the Senate, the Judges of the Supreme Court and the Chancellor of the State. In December, 1829, the case was argued before that truly imposing tribunal, in the Senate-Chamber where Root, as Lieutenant-Governor, five years before had pronounced that opinion, out of which grew all this

important litigation. Now, as on that occasion, the Senate-Chamber was crowded with spectators drawn thither to listen to the argument that was to be followed by a final decision in the case. Representatives of the press were there from all parts of the State and from other States, anxious to listen to a discussion in which they were so deeply interested. General Root himself occupied a seat within the bar, and was the observed of all observers. King, one of the defendants, was also present, but Verplanck, the other defendant, had gone from the collisions and trials of earth, beyond the reach of worldly tribunals, up to the Great Judge of all. The case was argued for the defendants by Mr. Blunt and John Duer, both accomplished and able lawyers. Benjamin F. Butler and John Sadam conducted the argument for Gen. Root. Here, as opponents on this hotly-contested legal field, appeared two of the illustrious revisers of the Statutes of the State of New York, Mr. Duer and Mr. Butler.

But the defendants were again subjected to defeat, and their defeat was final and disastrous. The case had been through so many courts that the costs exceeded the judgment by a large sum.

Two members of the court wrote opinions; Chancellor Walworth, in favor of affirming the judgment, and Senator Mather, in favor of reversing it. Sixteen members of the court were for affirming the judgment, and four for reversing it.

Thus ended one of the most important cases affecting the law of libel ever tried, especially down to that time, and perhaps down to the present time, in this State. The result was unsatisfactory to a large part of

the public, who believed that the defendants established a perfect justification for their public action, and should have succeeded. Of course the friends of General Root took another view of the case—one that was sustained by three great tribunals, after long, patient and exhaustive examination.

LIGHTS AND SHADES OF THE COURT-ROOM.

Incidents in the life of Thomas A. Johnson, derived from a long and Brilliant Career on the Bench—Personal appearance—His manner—Sententious and Humorous Charge in the case of the Lost Thumb—The Biter Bit—The Card-player in Court—Johnson's opinion of a good Whist-player—How he dealt with a Soft-hearted Jury.

In writing this work we have not intended, in any sense, to enter the field of biography. But in carrying out our design we have selected some scenes and incidents in the life of Thomas A. Johnson, one of the ablest, most experienced, venerated judges of our State, because they are replete with interest and profit to all classes of readers, and because they represent in a striking manner, the trials and triumphs of the court-room.

From the formation of the government down to 1847 judges were appointed by the Governor, by and with the advice of the Senate. An elective judiciary was therefore regarded by many as the most dangerous innovation of the new Constitution. It was urged that the election of judges by the people would bring them within the range of politicians, managers of conventions and wire-pullers, who have no better comprehension of the attributes of a judge than the managers of a horse race. But, happily, their selection has been almost exclusively committed to lawyers, who, as a rule, out of respect for themselves and their profession, will see to it

that none but men of purity of character, learning and ability shall be invested with the ermine.

In June, 1847, the first judicial election under the new Constitution took place. Throughout the State lawyers were elected for judges, of the highest and purest professional and private character. As they had adorned the bar, they added luster to a bench which has long been the admiration of the nation, and the world.

Among the judges thus elected was Thomas A. Johnson, who for over a quarter of a century ranked among the ablest of the American judiciary. In his long judicial career, he looked on almost every phase of the legal world; witnessed every kind of legal contest, and measured every degree of legal learning, ability and eloquence. In the later years of his official life, the scenes and incidents he had witnessed from the bench often came before him, something like a panorama enlivened by contests of conflicting interests, begun and ending in selfishness, cupidity and fraud; of honest claims resisted by dishonest debtors; of dishonest claims made by the wealthy and powerful against the weak and helpless; of the traduced and slandered seeking to restore their good names by an appeal to the law, often leaving the court-room with the shades still deeper and heavier on their characters. Of the innocent dragged to the bar to answer for infamous crimes they never committed; of the guilty brought there for due punishment, struggling, often successfully, to escape the consequences of the commission of a dreadful crime. Often he pronounced that sentence which terminated the life of a fellow-being on the scaffold, or incarcerated him in a gloomy prison for a term of years. Then rendering

judgments that dissolved the marriage relation, or changed the possession and ownership of many broad acres ; or the claim to vast sums of money.

Could this panorama be viewed by the world, from his stand-point, what thrilling interest would it excite? It would show, among other things, that the fame of the judge or the lawyer, no matter how bright in its day, is almost as fugitive as the leaves of the sibyl; that the first makes a legal argument, in which perhaps learning and genius are blended—in the preparation of which he has spent weary days and nightly vigils. "When the case is reported, the only notice he receives is,—Jones for the plaintiff, and Smith for the defendant—the result of all his labors is incorporated in the opinions of the judges."

What of the judges? Many of their ably-written judgments, bearing the impress of elaborate study, which, for power of thought, beauty of illustration, severity of reason, and elegant demonstration are justly numbered among the highest efforts of the human mind, find no admiration in literary or scientific circles, or among the people, and nowhere except in the ranks of the few lawyers who thoroughly read and digest them.

Johnson studied his profession with that judge of historic fame, that legislator of purity and wisdom, Robert Monell. He used to relate an anecdote of Monell which strongly illustrates one of the most pleasing traits in his character.

A very capable, ambitious young lawyer was trying a case before him at Angelica. He appeared for the plaintiff. When he rested his case, Martin Grover, with whom it was his misfortune to grapple as an

opponent, moved for a nonsuit. Grover's point was as subtle as it was strong, unexpected and fatal to the plaintiff's case. But to the surprise of the members of the bar and disgust of Grover, the judge denied the motion, refusing to nonsuit the plaintiff. The motion being thus disposed of, court adjourned for dinner. On his way to the hotel the judge was accompanied by a lawyer, who said :

"Judge Monell, I really cannot see on what ground you denied Grover's motion for a nonsuit."

"Well," said the judge, "there really are no legal grounds for denying it, but I denied it on other grounds. To have nonsuited that young man, before all those lawyers and that great crowd of witnesses and spectators, would have been a dreadful blow. I could not do it. But I'll take good care of Grover's point when I charge the jury, for it covers the whole case ; the grounds for the nonsuit cannot be removed, and I shall charge the jury accordingly." He did so. Grover had the full benefit of his point, while the fall of the young lawyer was greatly softened.

Judge Johnson had strong sympathies, strong antipathies and prejudices. It cannot be denied that these occasionally exhibited themselves in him when on the bench. Usually, however, he presided there with an amenity and impartiality that rendered him a favorite with the bar and the public.

There was much in the appearance of Thomas A. Johnson that commanded respect. His form was tall and commanding, approaching herculean symmetry. His forehead was high, his eyebrows heavy and dark. All his features were large and strongly marked. But

they were set off by a dark, expressive eye; lips which, when closed, showed inflexible decision—when speaking, became supple and flexible with an easy humor. In repose this *tout ensemble* was pleasing and attractive, but when roused to indignation there was something leonine and fearful in it. Sarcasm and irony from such a person, it can easily be conceived, were terrible weapons. He possessed them, and occasionally used them with withering effect. We have sometimes seen his eyebrows contract, his forehead knit, and a portentous frown lower over his features, when a persistent, conceited, impudent lawyer in the trial of a cause so far trenched on the rules of propriety as to approach contempt of court. It was fortunate indeed if the offender read the coming storm in the face of the presiding judge.

His strong sense of right and justice were frequently exhibited on the bench in a manner that pleasingly revealed the wit and humor that lay deep in his nature. We remember a case in point..

A man brought an action against a neighbor for biting off one of his thumbs. The evidence showed that the plaintiff—the victim of the lost thumb—commenced an assault on the defendant by knocking him down, falling upon him and attempting to gouge out the man's eyes; that while in the act of inserting his thumb into one of his victim's eyes, by accident it slipped into his mouth and was immediately bitten off. The wound was terribly painful, and the loss of the thumb a very serious matter. Judge Scott Lord, who appeared for the plaintiff, admitted that his client made the first assault, but insisted that, as the defendant used more force and inflicted greater injury than were necessary

in repelling it, he was liable for the heavy damages his client had sustained. The judge, however, took a different view of the case. His charge to the jury was a model of dignity, point and brevity. There were witty, humorous tints playing about it that occasionally illume the dull and uninteresting proceedings of the bar.

"Gentlemen of the jury," said he, "you have listened very attentively to the evidence in this case. It shows that the plaintiff made an assault upon the defendant and knocked him down; that while he was down the plaintiff continued the assault by feeling, with a malicious intention, for one of the defendant's eyes, and with a purpose that no one can doubt; that while in this act, by some means, one of his thumbs was inserted in the defendant's mouth, instead of his eye, and that the defendant then bit it off, inflicting, as the evidence shows, a very severe and painful injury.

"Now, gentlemen, the court instructs you, as a matter of law, that when a man knocks another down and then proceeds to dig out one of his eyes and by accident slips one of his thumbs into the prostrate man's mouth, there is no law that will prevent the man from shutting his mouth as firmly as he pleases, regardless of what may happen to the thumb, especially, as in this case, he used no inducement for its owner to place it there. The old law, *lex talionis*, was that one might take an eye for an eye and a tooth for a tooth. In this case the old rule is inverted; here it was a tooth for a thumb when the thumb was going for an eye. You may retire, gentlemen."

We need not add that the defendant had a verdict.

On another occasion an ex-judge of the Supreme

Court, who, at the expiration of his term, had returned to the practice of his profession with distinguished success, appeared for the plaintiff in an important cause. During the trial the opposing counsel introduced a witness whose testimony visibly shook the plaintiff's case, much to the annoyance of his counsel, who, before commencing the cross-examination, whispered to his client and asked if the witness was in every sense reliable.

"I don't think of anything to the contrary," was the reply.

"Don't you know of anything at all against him? Because, if you do not your case is destroyed."

"Nothing, except that he plays cards a good deal."

"Ah! indeed; he is a card-player, is he?" asked the counsel, brightening up. "Does he play a good deal? and does he gamble?"

"I don't think he gambles, but he plays a great deal, and is the best player in the country, and plays every chance he can get."

The ex-judge, though a highly respectable citizen, and eminent at the bar, was, withal, slightly Puritanic in his notions, and verily believed that card-playing, in any way, was a great evil; that by showing the witness to be a card-player he would discredit him with the jury. Rubbing his hands with delight at the fortunate discovery he had made, he commenced the cross-examination in earnest. After a few preliminary questions he went directly to the point.

"Mr. J—, are you not a professional card-player?" he asked, with some severity.

"I don't know that I am a professional card-player, but I play cards sometimes."

"I ask you, sir, if you do not play cards a great deal? if you are not in the constant habit of playing?"

"I don't know what you mean by a constant habit."

"I mean what I say, sir! and I ask you again if you are not in the constant habit of playing cards?"

"Why, I play cards quite frequently for amusement, but I never gam——"

"I did not ask you what you played for," said the counsel, interrupting the witness. "Now, sir, tell me how often you play cards."

"Well, sir, my wife and daughters often make up a little party and we play a——"

"I did not ask you to tell me what your wife and daughters did or do. I want you to tell me how often you play cards."

The witness hesitated, and the opposing counsel objected to the question as irrelevant.

The members of the bar present had been watching the peculiar expression on Johnson's countenance while this cross-examination proceeded; there was something in the contraction of his heavy eyebrows that told plainer than words his opinion of it, and that the ex-judge was about to hear from him. But the latter, intent on destroying the credibility of the witness, and fully believing he was doing so, insisted that there was nothing in the objections of the opposing counsel, and that he should be permitted to continue the cross-examination.

"What is the object of this cross-examination?" asked Johnson.

"It is to discredit the witness, your honor," said the ex-judge.

"Do you think this kind of evidence will impair his credibility?"

"Oh, certainly; most certainly; I propose to show that the witness is an inveterate card-player; that he employs most of his leisure at the card-table, and there is no doubt but I am entitled to the evidence."

"I think myself you are. But suppose you succeed, and show the witness to be a veteran, as well as an inveterate, card-player, in an innocent way, like others you might possibly mention, how will that help you?" asked Johnson, with a slight smile on his face.

"Why, your honor, as I said before, it will discredit the witness very much indeed."

"Well, perhaps it may. You may continue the cross-examination; but if you draw out of the witness that he plays a strong game of whist, and that he is fair at euchre, I think I ought to charge the jury that he is a credible witness. But proceed with the cross-examination, sir."

"Why, in that way your honor will euchre me," said the ex-Judge.

"Then, judge, why not acknowledge that you have nothing in your hand, and throw it up?" asked Johnson, in his blandest manner.

"I think I will," said the counsel, and the witness was dismissed.

We have related incidents showing Johnson's pleasantry on the bench. The following exhibits him when aroused to indignation.

While presiding at a Livingston county circuit, an aggravated case of assault and battery came on for trial.

The plaintiff was a widow and a tenant of the defendant. One day a dispute arose between them concerning some repairs which the former desired to have made. The difficulty ended in a very bitter quarrel. Both parties used the most insulting language. The lady, however, had the sharpest tongue, and she used it, as only an intelligent, quick-witted woman, thoroughly indignant, can use that member. The man saw that he was no match for the lady in a conflict of words, and he sought a more effective weapon than the tongue. Finding a heavy flat-iron standing on a table near him, he dealt her a terrible and nearly fatal blow on the head, which felled her to the floor. Not satisfied with this, he struck the prostrate woman another blow with the same weapon. At first it was thought she was dead, but she slowly recovered, and commenced the action to which we have referred to recover the damages which she had sustained.

The defendant did not deny that he struck the woman with the iron, but denied that she sustained any material injury, and by way of further mitigating damages, set up "the impudent, insulting and outrageous language," which the lady had used toward him. Under this answer the defendant's counsel made a very ingenious and effective address to the jury, which so wrought upon their feelings that they rendered a verdict for only sixty dollars against the defendant. This was, of course, a brilliant victory for the eloquent lawyer who had defended him. But it was of short duration. The moment the foreman announced this verdict, all in the court-room saw in the cloud that overspread Johnson's features "the prelude to a coming storm,"

and it came in full force. "Clerk!" he thundered, "enter an order setting aside that verdict! It is a disgrace to the records of this court! When jurors show no more regard for human life than this it is high time for the court to interfere and teach them a salutary lesson!"

The verdict was accordingly set aside.

A discussion then arose between the counsel as to the pay of the jurors, one of them contending that they were not entitled to pay, while his opponent insisted that they were. The matter was left to the judge's decision.

"Of course the jurors are entitled to their pay, for they have rendered a verdict, such as it is. Pay them, and I trust every juror will keep his two shillings and study it faithfully as a reminder of his duty as a juror, before he ever undertakes to render another verdict," said Johnson.

At a subsequent circuit the case was again brought to trial and a very satisfactory verdict was rendered for the lady.

Judge Johnson died at his residence in Corning, December 7, 1872.

Like Marshall, Tenterden, Talfourd, and many other eminent judges and lawyers, Johnson occasionally courted the Muses with success. To a certain extent he enriched the literature of his day with valuable but anonymous contributions to the press.

He disliked those sporadic abilities which, while they glitter, weaken by unhealthy distribution. But he felt that lawyers as a class need the vivifying influence and aid of a refined and elevated literature to

render their minds more vigorous and flexible, and to relieve them from that dull, argumentative reason and its pigeon-holed inertness which paralyzes the eloquence of the bar.

Among the published productions which Judge Johnson acknowledged is his poem entitled "The Chemung and its Tributaries," published in December, 1870. It is a lively, strong and pleasing picture of the Tioga, Cohocton and Canisteo, concluding with their union, to form the Chemung. It is an entirely unpretending production; still, it has much delicacy and richness of tint, truth to nature and opulence of thought, fancy and imagination—presenting the crags, cliffs, rocky pinnacles, pine-clad hills, devious rivers and charming valleys of Steuben and Chemung in lights and shades that carry the reader back to days before

> "Sullivan in martial force,
> And sword and gun and wasting flame"

accelerated the doom of a race now forever vanished from the shores of those beautiful rivers and charming valleys. Those not intimately acquainted with Judge Johnson would hardly believe—from his apparently prosaic nature—that he ever entered those regions "where poetry is born, nourished and plumes itself for an immortal flight." But he was one of those who may be said to have two lives, the inner and the outer; one of which is in a world of ideality and beautiful conceptions, of poesy and of song, of the picturesque and the lovely; the other, a world of stern reality, of strife, of ambition, hopes, fears, failures, disappointment and death.

In June, 1848, soon after his election, Judge Johnson presided at the Wayne Circuit. Here he met Hon. James C. Smith, then a distinguished and successful lawyer—now one of the Judges of the Supreme Court. At this term Judge Smith tried several important cases, and he was favorably impressed with the judicial superiority of Johnson, even at that early period; while his pleasing simplicity of manner, social qualities, and courteous bearing toward the bar—especially the younger members—his ability and impartiality, were spoken of in terms of high commendation by the journals of the village.

When the circuit finally adjourned its sittings, he was invited by Mr. Smith to spend two or three days with a friend of his at Sodus. As the Judge had never visited that charming place, where so many beauties of nature are blended, the invitation was accepted, and, with Judge Smith, he became a guest of Benjamin Lummis, Esq., a gentleman of cultivation and taste, whose hospitality is widely known. At this time Mrs. Elizabeth F. Ellet, a sister of Mr. Lummis—a charming writer and well-known authoress—was visiting her brother. Sodus was then, as it always is at that season of the year, a resort for persons of intelligence, refinement and leisure, forming a society at once entertaining and profitable. Judge Johnson, relieved from his judicial cares and labors, gave himself up to the enjoyment of social intercourse, exhibiting the freshness and resources of his conversational powers. Though he was not what may be termed a brilliant talker, he was interesting, natural and unassuming in conversation, with a ready fund of anecdote at his command.

In after life Judge Johnson often remarked that this visit was one of the most agreeable and pleasing incidents in his life.

Time passed on, hurrying his brethren of the bench, one after another, to the grave. At length James C. Smith became a Justice of the Supreme Court and a judicial associate of Johnson, E. Darwin Smith and Henry Wells. Soon after his appointment Judge Smith received a beautiful poem from Johnson, describing their first meeting at the Wayne Circuit and their visit at Sodus. It playfully, but gracefully, alluded to many of the incidents and much of the conversation which took place there. It was an unstudied, happy, truthful picture, which revived pleasing memories of the past. Each one of the *dramatis personæ* were faithfully portrayed, all life-like.

> "With hands as warm and brows as gay
> As if they parted yesterday."

The poem was accompanied by a letter congratulating Judge Smith upon his appointment, and welcoming him to that bench upon which Kent, Spencer, Marcy, Van Ness, Nelson, Cowen and Beardsley had sat.

Judge Johnson brought to the bench a drastic physical and mental strength that enabled him to endure the most ardent and wearing labors of his office for twenty-five years. The large number of opinions written by him exhibit accurate legal knowledge, and are couched in plain, strong, elegant language. His style "is an aggregate of argument and concise facts in a small space, united together as by bands of iron." But above all they bear the sure indication of an elevated, resilient

mind, and the habit of referring all questions to that stern tribunal—conscience.

Therefore, the bar loves to recall the memory of his judicial career, his brethren of the bench remember him with fraternal affection ; the multitude of suitors, jurors, witnesses and spectators who saw him discharging his duties on the bench speak of him with veneration and respect.

For several years he was the presiding judge of the 4th Judicial Department of the State. He died at Corning, his place of residence, December 7th, 1872, having five years of the term for which he was last elected unexpired.

ARTISTIC AND MENTAL PORTRAITS OF FOUR EMINENT LAWYERS AND STATESMEN OF WESTERN NEW YORK.

John C. Spencer—Francis Granger—Gideon Granger—Pleasing Circumstances and Incidents in Their Lives—Portrait of an Illustrious Orator and Statesman.

THE walls of the county court-room, at Canandaigua, N. Y., have, by the good taste and liberality of the people of Ontario county, been embellished with well-executed portraits of persons distinguished, not only in the history of Western New York, but in the State and nation. Thus, the contests of the bar, the deep solicitude of suitors, and the deliberations of judges, are witnessed by jurist, statesmen, advocates and politicians of the past, which the pencil of the painter has rescued from "time's effacing fingers." Many of these paintings, if not marked by the highest powers of genius, exhibit much force and vitality and vigor of touch, united with delicacy and grace. The effect they produce upon the thoughtful observer is singularly impressive, causing him to reverently acknowledge the oracle of art, which, by a happy thought, is here made a beautiful accessory to the presiding genius of the place—justice. Voiceless and shadowy, they unite the past with the present, suggestive of old traditions, historic events and man's fading glories. Prominent among those whose forms and features have been thus preserved, is the portrait of John C. Spencer.

He looks down from "the speaking canvas," self-poised, cold, passionless, and confident of his own mental strength. His features are marvelously suggestive of "that insatiable activity of mind, knowledge of the widest scope, and aptitude for public affairs" that rendered him a powerful supporter of De Witt Clinton's splendid policy and career—the great lawyer, accomplished statesman and cabinet minister.

A distinguished feature in the mental portrait of Mr. Spencer—the one that gave him national fame, was the happy manner in which he united philosophy with eloquence. This, by common consent, caused him to be styled the philosopher of the American bar, just as Ogden Hoffman was known as the Erskine of his times. This gave fascination to logic and emotionless reason, that otherwise would have fallen coldly from his lips. This enabled him to imbue his auditors with the "sober, serious rapture," which solid argument ingeniously and gracefully urged always produces. There was freshness in his thought, and he possessed the power to meet the intellectual wants of thinking men. In other words, he rendered his thoughts obvious, plain, and yet shining with irresistible evidence.

His arguments at the bar, so abundant in the earlier American reports, his speeches in popular assemblies, his diplomatic and other writings, though many of them were fugitive and temporary in their nature, have inseparably connected themselves with the learning of the bar, with the preserved erudition of American statesmanship, and the permanent literature of the nation.

John C. Spencer was born at Hudson, N. Y., Au-

gust 12th, 1786. His father was Chief Justice Ambrose Spencer, distinguished in the history of the State of New York, as the able compeer of Hamilton, Schuyler, Jay, Clinton, Van Buren, and Tompkins, and as one of the most illustrious, learned and pure judges that ever adorned the bench.

Young Spencer was graduated at Union College, in July, 1803, at the age of seventeen. He prepared for the bar under the instruction of his gifted father, taking his degree as attorney-at-law in May, 1806. In the year 1809 he removed to Canandaigua. This beautiful town was then thought to be so far distant from the Atlantic towns and the villages along the Hudson, that a journey to it was regarded far more difficult and dangerous than a tour across the continent now is. But it was said to be situated in a country as charming as the Garden of Hesperides, or the Vale of Tempe.

Though his professional progress was slow, it was sure. It placed him at the head of the State bar; it gave him a seat in the assembly and in the senate of the State of New York, and in congress; made him a reviser of our statutes—the Justinian of his country. It made him Secretary of War in the cabinet of John Tyler, "where his extraordinary administrative abilities were invaluable to the incoherent and disorganized cabinet which Tyler's unexpected and sudden accession to the presidency compelled him to call around him." Mr. Spencer resided at Canandaigua until September, 1837, when he removed to Albany, where he spent the remainder of his life. He died on the 20th day of May, 1868.

Hard by the portrait of John C. Spencer hangs that of Francis Granger, another citizen of Canandaigua,

high in rank as a political leader, legislator and cabinet minister.

This picture commands attention and study, not only for the softness, grace and accuracy of its composition, the exquisite blending of its lights and shades, but for the intellectual expression that presides over it. Thought seems to breathe through all its lines in the visible harmony of manly beauty. Not only the critical admirer of antique art, he who can read the attractive story of Psyche in the mute marble form carved by the sculptor, but he who loves to study "the human face divine," will pause to admire this fine painting, the work of some gifted artist to us unknown.

The whole contour of the face exhibits conscious superiority—a patrician's self-respect, softened by cultivation, amiability and generosity.

So much for the portrait—what of the original?

Never was there finer model for sculptor or painter, even of the most fastidious school or age, than were the features and form of Francis Granger. If the chisel of Michael Angelo made marble flexible, it was the subject upon which he employed his chisel. In the same sense, the task of drawing the mental portrait of a man like Francis Granger, though not committed to a master hand, is easy, notwithstanding some difficulties present themselves. In executing it, may we not hastily accept the natural guidings of our more generous nature, which is ever best pleased in looking back upon the career of the loved and admired in life, to remember only their virtues, and to dwell upon them with gratitude and affection, leaving whatever of earth was in their souls to decay with their bodies in the grave? This is what ex-

perience sanctions as most truly beneficial, this is what liberality dictates, and love enjoins. "As with the landscape, which, when seen near at hand, discloses many marks of barrenness and imperfection, yet as distance rounds itself off into forms of loveliness, stimulating our hopes as we approach it, waking an affectionate regret as we leave it," so let it be with the characters of the past that come under our feeble review.

Mr. Granger stood conspicuous among the great men with whom he was an actor. Though he had none of the prestige which a brilliant career on the bench or at the bar usually gives, he was seldom eclipsed in parliamentary bodies or in the cabinet by those who had prestige. They rather served to elicit his talents as a political leader, and to bear testimony to his creative force of character as a manager of a party, moved, energized and controlled by the the most illustrous statesmen in the world—we allude to the Whig party now passed into history. To all his work he brought an official and personal integrity that never for a moment encountered a suspicion or a whisper of reproach. He was not a reformer, not a man to attack existing evils in the State, but rather inclined to suffer from them, while endurable, than to disturb the existing forms by which they are protected.

It has been said that Mr. Granger was not an eloquent speaker, but we think otherwise. He could readily grasp ideas, and with easy logic deliver them in fitting words to the public ear. In this respect Mr. Granger was an orator. But the accomplishments and powers of his mind were best exhibited by his strong and graceful pen. Never prodigal of its productions—

seldom wielded, except in the discharge of the important duties which Providence committed to his hands. He was stately, but courteous, easy and dignified in his manners, commanding and almost superb in his person. There is much harmony in his mental portrait, and his intellectual qualities compare admirably with his physical, so that his mind, heart and visible bearing elicited spontaneous respect, if not admiration. Though in public and private life he was flexible to every human sympathy, he was not what may be called a popular man with the masses. Such men seldom are. He belonged to that aristocracy of talent and wealth which formed the nucleus of the Whig party, and he had no occasion to assume the platitudes of the mere politician to give him success. Besides this, he knew that the populace never long esteem those who flatter it at their own expense; that he who has the suppleness to cringe to it, will live to complain of the fickleness of the masses.

Francis Granger was born at Suffield, Conn., June 8th, 1793. He was a son of Gideon Granger, of that town, distinguished in the history of Connecticut as a lawyer, author, legislator and minister of state—a character fitted by education and position for useful activity. In 1801, after Democracy and Jefferson had overthrown the Federal party, he was appointed Postmaster-General—a position which he occupied through successive administrations down to 1814. In 1815, he removed to Canandaigua, where he spent the remainder of his life. He was then forty-nine years of age—in the prime of his manhood. He at once entered largely into the public afiairs of Western New York, representing

his district in the State Senate several years, holding other responsible and honorable official positions.

After graduating at Yale College, young Granger entered the office of John C. Spencer, at Canandaigua, as a student at law. In due time he was admitted to the bar, but he never practiced his profession. Though he ignored the bar, the politicial arena to him was invested with many attractions, and he entered to win honor and distinction. His wealth, the influence of his high family, his education and talents, combined to give him, while yet young, a conspicuous position as a politician. It was his fortune to pass his youth and enter manhood at a peculiarly interesting period in the history of the state and the republic. It has been said that the history of the memorable reign of Louis XIV. of France, is contained in the lives of Richelieu and Mazarin. It may with equal truth be said that much of the history of the State of New York which vitally affects posterity is contained in the life of De Witt Clinton and his compeers. It was the era in which our grand system of internal improvements was inaugurated—our system of constitutional, common and statute law founded. In this age, amid the exciting and prolonged political contest in which Martin Van Buren and De Witt Clinton, each with his eye on the presidential chair, were struggling for supremacy—a contest in which the star of Clinton, though occasionally dimmed by depressing defeat, was in the ascendant.

Mr. Granger espoused the cause of the latter with great warmth, as did most of the leading men of Western New York. He came first to the public service in 1826, as a Clintonian member of Assembly from Ontario

county. He represented this county with great ability, by repeated elections, five successive terms. On the 28th day of February, 1828, a few weeks after he entered on his second legislative term, De Witt Clinton died. With his death the splendid party which his grand policy and his great ability had called around him, was gradually dissolved, leaving Mr. Van Buren without a rival for the presidency in the State of New York. Mr. Granger never gave Van Buren, or the Democratic party, of which he was the acknowledged leader, his support.

Before the death of Clinton, the alleged murder of Morgan by the Masons took place. This created an excitement which shook the State from center to circumference, producing an excitement that amounted to popular frenzy. Out of it, after the death of Clinton, the famous anti-Masonic party sprang into existence. Mr. Granger was one of the founders of this party. In the State of New York it soon became so powerful that it grappled with the Democratic party in disputing for the mastery of the State. In Western New York it became the dominant party, while it was formidable in all parts of this and many other States.

In 1830, Mr. Granger was nominated by this party for Governor. His opponent was Enos T. Throop, who, after a severe and exciting contest, was elected by a small majority. In 1832, he was again nominated for Governor by his party. This year that illustrious statesman, William L. Marcy, was his antagonist. Mr. Granger was defeated by a majority of 9,798.

But the anti-Masonic party had only an ephemeral existence. The contest which resulted in the election

of President Jackson, eliminated all its vitality, and it became a thing of the past. Out of its ruins, and from the ruins of the National Republican party, the Whig party came into existence; the powerful, and at last victorious opponent of the Democracy. Mr. Granger at once became an acknowledged leader of this party. In the autumn of 1834, he was elected Representative in Congress by the Whigs of his district. He entered upon the duties of his office December 7th, 1835. At the expiration of his official term, he was re-elected, and he continued to represent his district until March 3d, 1841. Very soon after retiring from Congress, he was appointed by President Harrison Postmaster-General. Hardly had a month elapsed after assuming the duties of his office, when Harrison died, and his cabinet, with the exception of Mr. Webster, retired. On the 5th of September, 1841, John Greig, a member of Congress from the 26th district, resigned, and Mr. Granger was elected in his place. He remained in Congress until March 3d, 1843, when he returned to his seat in Canandaigua, where he continued to reside until his death, which took place in August, 1868.

It would be quite impossible for the lover of art to leave the room without pausing to admire the beautiful portrait of Gideon Granger which hangs near that of his father, whom we have just described. This painting is excellent in its execution, and deeply interesting in the truthful and vivid representation of an accomplished, high-toned, elegant gentleman and greatly beloved citizen. Such rare qualities in the original, enliven, deepen and enrich its colors, amalgamating them in harmonious union. Gideon Granger was born at

Canandaigua in 1820. He was liberally educated, refined in his tastes, and pleasing in his conversation. It is said he was one of the most elegant and easy conversationists in the graceful and enlightened circles in which he moved. When, in 1837, as the companion of his father, then a member of Congress, he appeared at Washington, he became a general favorite in its society—a society whose polished excellence has never been equaled in that city, or in any city in the nation. At home Gideon Granger was popular with all classes. Indeed, it is not saying too much of him, that few men were more universally beloved than he. Without any effort, he won the hearts of men to a surprising degree. He possessed a delicacy that instinctively shrank from wounding the feelings of the humblest human being. Those who knew him best could not, by any effort of imagination, put an undeserved acrimonious speech into his lips, any more than they can think of him under an entirely different countenance. He possessed the only true dignity, that which results from proposing, habitually, a high standard of feeling and action; accordingly the admiration that he gained was always tempered with respect. He was one of the last men to be approached with rude familiarity. He was a Christian in the true and highest sense of the word. He went to the Mercy-Seat as one who was not a stranger there. His acts of adoration discovered a mind penetrated by the majesty and purity of God; but his conceptions of these attributes were always tempered and softened by divine benignity.

To live religiously he did not think himself called to surrender the proper pursuits and gratifications of

human nature. He believed that religion is in harmony with intellectual improvement—with the pleasures of imagination, and especially the kind affections. Hence, instead of that narrow, contracted and repulsive character which is often identified with piety, his religion was attractive, cheerful and lovely. This union of strength and light in his sense of duty, gave singular harmony to his character. His chief distinction was not talent, although he had fine intellectual powers and practicability, which, in usefulness, if not in splendor, generally surpasses genius. Unlike his father, Gideon Granger had no political ambition. Indeed, he disliked politics, and held politicians in utter contempt.

Like his father in form and features, he was a model of manly beauty. This was exhibited in elegant antithesis of limb to limb, in easy mobility, and equipoise of person so solid and full that it accorded with refinement and intellectuality. In his portrait, to which we have referred, his features bespeak the man, and exhibit intellectual conceptions in the colors of life. Such was Gideon Granger.

If our conceptions and description of his merits are true, may we not say that in him we have found a character whose blamelessness spares us the pains of making deductions from its virtues? Mr. Granger died at Canandaigua, on the 1st of September, 1868, aged forty-eight years.

There is a melancholy interest attached to the last days of Francis Granger and his son. Within the space of two days they were both taken from the world. The grave of the father had not received its precious relics

before the tomb of the son opened to receive all that death had left of him on earth.

In this room hangs another portrait that always commands attention. It is a face full of character, eloquent expression and subtlety of thought, in which mind and sentiment are plainly visible. It is a handsome face, though slightly touched with that expression of concentrated self-esteem, which, carried to excess, renders a man of merit unpopular, and a man without merit ridiculous. It is the face of a statesman and orator, who reared his own monument—a monument that will stand through all the ages that free government and human equality shall exist. The nation whose son he was, and whose commission he bore in her Senate-chamber will cherish tenderly his memory, and point proudly to his name—a name which is at once history and inspiration, for it is STEPHEN A. DOUGLAS.

In his youth he was a student at Canandaigua Academy. In her lyceum he displayed eloquence that attracted general attention, and which has never been forgotten.

The genius of the student, the fame and virtues of the statesman and orator, endeared him to the people of Ontario County, and they have placed his portrait among those of their own illustrious dead, hard by the classic halls in which he drank at the fountains of knowledge.

A DUSKY ADVOCATE.

A Son of the Forest at the Bar—Red Jacket's Address to the Jury in a Murder Case—His Temperance Address at Avon Springs—Court Scene at Batavia.—An Anecdote—How a Poet paid a Debt.

THOUGH Sullivan and his invading host did not march over the soil of Avon, giving it a claim to centennial honors, it is one of the historic places of Western New York ; rich in memories of the past, blended with legends of the red man and the deeds of the pioneer.

Among its earliest visitors was one renowned in story and remembered in history—a battle-scarred warrior—an orator imbued with nature's own eloquence—the last of a race of intrepid chieftains who won a fame exaggerated to some extent—that would still have embellished the age of chivalry. This was Red Jacket. He visited Avon to drink its waters and to hunt the wild deer on the banks of the Genesee.

It is related that an Indian of his tribe was indicted and brought to trial at Canandaigua for murder. Red Jacket, assisted by that great lawyer, John C. Spencer, then a young man, conducted his defense. The alleged crime was committed when the prisoner was drunk.

Red Jacket, by permission of the court, addressed the jury in behalf of the accused. His speech was a wonderful combination of strong common sense and thrilling eloquence. Though at times his language was

stilted, after the manner of Indian oratory, there were in it those touches of nature which send the words of Burns home to the recesses of the heart. Though it was not prodigal in learning, it was subtle, strong and commensurate with the occasion. Fine strokes of pathos were scattered amid its policy, its boldness, and its native beauty. It was an appeal of a child of nature standing between his friend and the gallows. It was bright, clear and gushing from the unpolished rock—powerful in its simplicity, touching in its deep earnestness—a voice out of the wilderness rolling over the forum, pleading among towers of legal learning for the life of a friend—a brother's voice, now tremulous in sorrow, now urgent in entreaty, now loud in denouncing the prosecution, and now ascending into high-wrought reason, and with all it was effective, for the prisoner was acquitted. He had the advantage, of course, of Mr. Spencer's great legal learning to direct and guide him through the trial.

After the trial Red Jacket, accompanied by his client, started on foot for their home near Buffalo. At Avon they rested for the day, near what is now known as Congress Spring. The chief gave a cup of its water to his friend and bade him drink it. He complied, taking a large draught into his mouth; the next instant his face evinced his dislike of the water. "Ugh! ugh! bitter! sour! kill um! stink! give me whisk." Red Jacket, with one of those grim smiles that often gave point to his words, replied in his own language, "Yes, bitter, sour, stinking, but not so bitter, sour and stinking as is the fire-water you love, for that goes into your brain and kicks reason and goodness out of it, and puts

a devil in its place, and then he leads you around, a crazy fool. He led you into jail and tried to have you hung by the neck. Now you are yourself again. You want to put more of that fire-water in your brain, so that you can become a fool again. Drink medicine water here, cold water at home, and let whisky alone, and you will be a good Indian, and you will see no more jails."

This was, perhaps, the first temperance address ever delivered in Livingston county; but pointed, well-directed and strong as it was, its author, it is said, like some modern temperance lecturers, failed to practice what he so eloquently advocated.

Avon was the home of that distinguished lawyer, orator and legislator, George Hosmer. Among his contemporaries was the late Heman J. Redfield, of Batavia. At the bar Hosmer and Redfield were frequently opponents. Hosmer's extensive practice often called him to Batavia. He was a favorite of its able and learned bar, and with the people wherever he went.

In those days one of the Judges of the Supreme Court would go down to Batavia and the other county-seats, and his arrival was a matter of great moment. The sheriff of the county and his deputies, in full uniform, the county clerk and members of the bar, would meet him some distance out of town, and in procession escort him to the court-house. It is said that the impressive dignity and formality which prevailed during the trial of causes in those days, would contrast strangely with the free and easy manner in which causes are tried now.

It is related that on one occasion Morgan Lewis, then one of the justices of the supreme court, presided

at a Batavia circuit. One day a lawyer of the name of Root, from Buffalo, a witty, able, but somewhat intemperate lawyer, was arguing a case before the judge, who saw at a glance that he was in his cups. "Mr. Root," said the judge, interrupting his argument, "take your seat. I do not hesitate to say that you are drunk." "Does your hon—hic—hic—honor say this on—hic—on ma—hic, mature deliberation?" said Root. "Yes, sir, that is my decided opinion; sit down, sir!" "Well, I ob—hic—obey. But hic—per—hic permit me to say, that it's the only sensible opinion that your—hon, hic—that your honor has pronounced at this term." His honor ordered Root into the custody of the sheriff, who kept him a prisoner until he was sober enough to appear in court and apologize for his language, when he was discharged. Hosmer, who was Root's opponent in the course of the argument that followed, was a little severe on him. One of Root's clients who resided at Avon, had induced him to take a number of sheep at an extravagant price, in payment for legal services, recommending them to be of the Merino breed. But when they were delivered they turned out to be small, coarse wool, ill-looking sheep. During the term of court to which I have alluded, Hosmer, Root, the judges, and a large number of legal gentlemen were at dinner. Hosmer was a man of small size and far from being handsome. During the meal he called out to Root, "Mr. Root," he said; "Mr. Root, by what rule do you select Merino sheep!" "By the same rule that your clients select a lawyer; who take the smallest and the ugliest-looking one they can find, and they are always satisfied with you in that respect."

In the year 1824 Mr. Hosmer represented Livingston county in the Assembly, distinguishing himself in the legal debates which rendered that session of the Legislature so memorable. At this time Mr. Redfield represented the 8th Senatorial District in the Senate. He took his seat in that body January 1st, 1823. After a successful but brief legal career, Mr. Redfield left the bar and became one of the most able and influential political leaders in the State. He wielded a strong, nervous pen, which gave expression to a well-stored, versatile and logical mind. The history of the State, particularly of Western New York, bears indubitable evidence of his ability as a writer, speaker and legislator. At home, where men are best known, where they are weighed in the truest balance, he was regarded as a blameless, highly-esteemed citizen, adorning all the relations of private life. We speak of him here, because of his intimate relations with Mr. Hosmer.

W. H. C. Hosmer, known as the Bard of Avon, was a son of George Hosmer. As a poet, his fame is before the world. He wrote much that is forgotten, but also much that will perpetuate his name as the poet of the Genesee valley and of Western New York. Enamored of its delightful scenery—once the hunting-grounds of a vanished race—of its dreamy but pleasing traditions, he has invested its charming lakes, bounding streamlets, bright rivers, lovely valleys and weird glens, with something of the interest which the pen of Irving has given the "lordly Hudson" and its shores. If he was a better poet and writer at the commencement of his career than at the last, there are reasons for it which cannot be mentioned here. His egotism was unbounded, but this

is a fault inherent in men conscious of extraordinary intellectual powers, from Cicero down to many that could be named in the present age. There was a vein of humor in Hosmer that made him at times an agreeable companion. Like most of those who court the Muses and linger around Parnassus, Hosmer was poor. He happened one time to be in the city of New York, greatly in need of funds to extricate him from pressing pecuniary embarrassments. While studying how he could obtain relief he happened to meet the late Colonel Hathaway, a brilliant and distinguished lawyer of Elmira, N. Y., a man of wealth, of cultivated taste, and a patron of literary men. Hosmer had known him many years, had often applied to him in his embarrassment for aid and never in vain. "Colonel Hathaway, I am delighted to see you," said the poet, shaking him warmly by the hand. "I am very happy to see you, Mr. Hosmer; how is it with you and the republic of letters?" asked the colonel. "You know, Colonel Hathaway, that all republics are ungrateful, but the republic of letters is especially so just now." "I am sorry to hear this; what is the particular cause of all this?" asked Hathaway. "Oh, it's the old story over again. I am sorely in want of a sum of money just now; indeed, I must have it, and as I always give my friends the preference in these matters I desire you to loan me the sum I need, which is just one hundred and fifty dollars." As soon as the money could be counted Hosmer was rejoicing in its possession. With many thanks and promises of early payment he took his leave.

Time passed on, a year rolled away, and the event had passed from Hathaway's mind, when one day he re-

ceived by express a box of considerable size, quite heavy and apparently well filled! Removing the cover he saw that it contained a large number of neatly-bound books, which, upon examination, proved to be the recently published works of the poet. Taking them from the box, Mr. Hathaway discovered the following lines neatly written on the inside:

"Poets are birds of various prey,
Ye Gods! why pounce on Hathaway?"

This was enough; the lender was generously paid. "The two lines in the box," as he afterwards remarked, "paid the interest compounded."

ROBERT EMMET, THE LAWYER, PATRIOT AND MARTYR.

Curran, the Great Irish Lawyer and Orator—Emmet's Plan for the Emancipation of Ireland—Its Failure—Assassination of the Chief Justice—Strange Presentiment—Emmet's Arrest and Escape—His Strong Affection for Sarah Curran ardently Returned—His Re-arrest and Trial—Thrilling Speech Before Sentenced to Die—His Execution—Miss Curran Faithful to the Last—Her Death—A Broken Heart.

ROBERT EMMET, so celebrated in history, over whose tragic fate so many tears have been shed, whose dying address has long been the admiration of the lovers of oratory, was born at Dublin, September 20, 1780.

At an early age he entered Trinity College, where he gained the highest honors for scholarly attainments and for the high order of eloquence exhibited by him. But the open manner in which he avowed his republican principles, caused his expulsion from college a few months before he expected to graduate. Immediately after this event he commenced the study of law, and in due time he was called to the bar. He rose rapidly to eminence, taking the highest position among the peerless orators of his country, one of whom said of him: "Were I to number, indeed, the men among all I have ever known who seemed to me to combine in the greatest degree pure moral worth with intellectual power, I should among the highest of the class place Robert Emmet. Wholly free from the follies and frailties of

youth, though how capable he was of the most devoted passion events afterwards proved—the pursuit of science, in which he admirably distinguished himself, seems at the time the only object that at all divided his attention with his enthusiasm for Irish freedom, which in him was an hereditary as well as a natural feeling."

Like his brother, Thomas Addis Emmet, while engaged in a highly honorable and lucrative practice, joined the order of United Irishmen, and became a prominent actor in the bloody scenes of 1798, and only escaped the scaffold by leaving his country and finding an asylum in other lands.

During the absence of Emmet a union between Ireland and England was effected, which, though intended to prevent any future revolt of the Irish, only deepened their resentment against England. The measure was first proposed to the Irish parliament on the 5th of February, 1800, in a message from the Lord Lieutenant. Though it was sustained by Lord Castlereagh in an argument of surpassing power, the excitement that followed baffles description. The indignation of the people knew no bounds. The populace of Dublin rose *en masse*, and tumult and bloodshed followed. The strong arm of the military power alone drove the people to subjection. After a stormy debate in the Lower House, one hundred and fifty-eight members recorded their votes for it and one hundred and fifteen voted against it. In the Irish House of Lords the measure passed by a vote of seventy-five against twenty-six. But so fierce was the popular opposition to it that the bill favoring the Union did not become a law until the 2nd of July, 1801. In August following the existence

of the Irish parliament ceased, and England and Ireland became one nation. But the Irish people never favored the Union. They were compelled to submit to it, though with turbulent disapprobation, by the strong hand of power.

To none was the union more repugnant than to Robert Emmet and his friends. It increased his hatred for England, and accelerated his efforts to arouse his countrymen to an armed opposition to it.

After parting with his brother at Brussels, he secretly visited Dublin, rekindling there the patriotic fires that had been quenched in blood, reorganizing secret bands of armed men in different parts of the city and adjoining country, establishing depots for ammunition, fire-arms, pikes, and swords, making preparations for a general rising throughout Ireland. He was strongly and ably aided by Russell, Dowdall and Coigley, men of high standing, experienced, gallant soldiers and devoted patriots. Robert Emmet arrived in Dublin in December, 1802. So rapidly did he and his associates mature their plans of revolt, that the 23d of June following was fixed for opening the contest. It was their plan to seize the castle and arsenal of Dublin, take possession of the city, and proclaim the independence of their country. They expected after this that the entire Irish people would unite with them in expelling the English forever from their country, and in establishing its independence. But they were surrounded, as the patriots of 1798 were, by spies and informers. Notwithstanding the secrecy which governed their movements, information had been conveyed to the government a few days before the outbreak, of

threatening assemblages of people; other indications tended to awaken suspicion that a general rising, as it was termed, was in agitation. On Saturday, June 23, 1803, toward evening, the populace began to assemble in vast numbers in St. James street, and its neighborhood, in Dublin, without any visible arrangement or discipline. To arm the body thus collected pikes were deliberately placed along the sides of the streets for the accommodation of all who might choose to equip themselves. About nine o'clock the concerted signal that all was in readiness was given by a number of men riding furiously through the principal streets; but general alarm was not excited until Clark, the proprietor of a large manufactory in the neighborhood of Dublin, an informer, who had that very afternoon apprised the government of the intention of Emmet and his friends, was shot and dangerously wounded. At this time a cannon, which had been in readiness for the purpose, was discharged, and a sky-rocket sent up at the same time, which was observed throughout the whole city. In a moment all was excitement; drums beat to arms; soldiers moved rapidly through the streets, and the horrors of battle commenced. Emmet, at the head of a chosen band, now sallied forth from his headquarters in Marshalsea lane, and led his followers to battle. Before they had reached the end of the lane in which they were assembled, one of the party discharged his musket at Colonel Brown, a gentleman universally esteemed by all parties, who was peacefully passing along the street. Unhappily the ball with which it was loaded took fatal effect. The attack of the insurgents was so badly managed, assuming the appear-

ance of a wild, tumultuous mob instead of a disciplined array, so few of the Irish joined in it, compared with what Emmet had expected, that when they were attacked by the government troops they were put to flight after a few volleys of musketry had been poured into them, and the insurrection was brought to an inglorious end.

One of the unfortunate and deplorable events of this rebellion was the horrible assassination of the Chief Justice of Ireland, Lord Viscount Kilwarden. This nobleman was greatly beloved and respected for his talents and his judicial accomplishments; but a singular presentiment followed him for years. During the fearful scenes of 1798 he believed himself destined to assassination. When that awful drama closed his friends hoped that he would be released from his perpetual apprehension, but they were mistaken; the fear of being murdered followed him like a threatening specter, though there was no apparent cause for his alarm. On the fatal 23d of June he retired to his country-seat, four miles from the city, after a week's close judicial labor. Hardly had he reached his retreat when he received intelligence of the attack of the Irish under Emmet. Ordering his carriage, accompanied by his daughter and his nephew, Rev. Richard Wolf, he returned to Dublin. What his lordship's object was in thus throwing himself into the very vortex of danger and death has never been known. Perhaps he believed that he would be less exposed to danger in the city, protected by the royal troops, than at his isolated country-seat. His carriage entered Thomas street immediately after the attack commenced; it was at once surrounded

by an enraged and furious mob, armed to the teeth, intent on slaughter. Lord Kilwarden immediately announced his name and official position. As this was disregarded, he prayed for mercy in the most pathetic manner; but disregarding his prayer, the supplications of his nephew, and the piercing shrieks of his daughter, an Irishman thrust a pike through his body. Wolf met the same fate. Both gentlemen were dragged from the carriage to the ground, where they were dispatched with innumerable wounds. The lady, however, was unharmed, and permitted to pass through the ranks of the insurgents to a place of safety.

The murder of Colonel Brown and Lord Kilwarden, with the disordered and undisciplined movements of his troops, so disgusted Emmet that he left the scene and returned to his quarters, where he was arrested for high treason.

Nothing could exceed the alarm and consternation which this insurrection created. Notices were issued by the Lord Mayor requiring all the inhabitants, except those connected with the military, to keep within doors after eight o'clock in the evening. Bills suspending the *habeas corpus* act and placing Ireland under martial law were immediately passed; preparations were made for sending large bodies of troops from England, and every precaution was taken to prevent the spread of the revolt. The Roman Catholics of the city, headed by Lord Fingal, attested their loyalty and patriotism in the most open and decided manner. In expressing their deep regret and sorrow for the enormities and outrages of the fatal 23rd of June, they tendered assistance to the government against any similar outbreak.

Robert Emmet after his arrest made his escape and fled to the Wicklow mountains, from whence he might easily have escaped to France, and, like his illustrious brother, Thomas Addis Emmet, found a home in America. At that time John Philpot Curran, the great Irish lawyer and orator, was in the plenitude of his fame. He was born at Newmarket, in the county of Cork, Ireland, July 24th, 1750. At the age of nineteen he graduated at the University of Dublin, removed to London, and commenced the study of law in Middle Temple. He was in due time, called to the bar, at once entered on a successful and brilliant practice, attaining a high judicial position. His education was that of a lawyer, his feelings, sentiments and ambition, were those of the lawyer, and fitted him pre-eminently to act on the minds of a jury. For over twenty years he had unrivaled mastery over the Irish bar. His speeches in defense of the Irish patriots brought to trial for participation in the great rebellion of 1798—made at the hazard of his own life—were the most splendid exhibitions of courage, magnanimity and eloquence ever known at any bar. Often, when addressing the jury in behalf of his unfortunate countrymen on trial for their lives, for rebellion against the English government, the court-house would be thronged with English troops armed to the teeth. They were placed there to intimidate the jury, Curran and the prisoner.

"*What is that?*" he exclaimed one day, as a clash of arms was heard from the soldiers at the close of one of his bold and terrible denunciations of the course pursued by the British government. An officer who stood near seemed, from his looks and gestures, about to

strike him with his sword, when the intrepid orator, fixing his keen black eye upon him, sternly said, "*You may assassinate, but you cannot intimidate me,*" and then proceeded in a bolder and more defiant strain than ever. "They were not mere clients for whom he pleaded; they were friends, for whose safety he would have coined his blood; they were patriots, who struck for their country and failed."

Curran's power lay in the variety and strength of his emotions. "He delighted a jury by his wit; he turned the court-room into a scene of the broadest farce by his humor, mimicry and fun; he made it a place for tears, by a tenderness and pathos which subdued every heart; he poured out invective like a stream of lava, and inflamed the minds of his countrymen to madness by the recital of their wrongs."

Lord Byron thus described him:

"Curran! Curran's the man who struck me most. Such imagination! there was never anything like it. His published speeches—his published life, give no idea of the man—none at all. He is a perfect machine of intellect and imagination. As some one has said of Piron, he is an epigrammatic machine. I have heard him speak more poetry in common conversation than I ever saw written, though I have only seen him occasionally. I saw him presented to Madame de Stael, at the house of Sir James McKintosh. It was the confluence between the Rhine and the Seine; and they were both so homely that I wondered how the two best intellects of France and Ireland could have respectively taken their residence in two such plain persons."

As I have already said, Robert Emmet had deter-

mined to leave Ireland forever and find a home in America. But a tie stronger than the love of life, all that is alluring and beautiful in love's young dream, bound him to his native city. There was one whom he loved with all the fervency of his passionate nature. "Like the god of the Hindoo, she had appeared, and lo, there was to him a new world." And his love was returned with all the warmth, truth, and confidence of a high-souled, gifted and beautiful woman. This was Sarah Curran, the daughter of the illustrious orator I have described.

And Sarah was the idol of her father, the inheritor of much of his intellect. To her, he was an object of such deep filial affection and of such reverence, that she might have applied to him the language of Theodosia Burr to her father, "My vanity would be greater," said she, "if I had not been placed so near you, and yet my pride is our relationship. I had rather not live than not be the daughter of such a man."

Such was Curran; such was his daughter. It is not strange that she should inspire a man like Robert Emmet with a love so intense that he left his retreat and hastened to Dublin, determined to see her once more before leaving Ireland forever. And this he did. In deep disguise he entered the city, sought and obtained an interview with her. But what pen can describe the ecstasy—the hopes, the fears of this meeting? Each felt that they met on the brink of fate—felt "that they must part, it might be for years, and it might be forever."

This interview was repeated, and Emmet, instead of leaving the city as he came, undiscovered and undetected,

lingered near the object of his affections until at last he was discovered by the authorities. He was arrested and committed to prison, where he remained until September 20th, 1803, when he was brought to trial under an indictment for high treason.

He conducted his own defense, exhibiting the most consummate skill, coolness and intrepidity during the whole trial. Able, experienced, sagacious and renowned lawyers regarded the defense he made, the learning and erudition he exhibited, the astonishing oratorical powers he displayed, with wonder and admiration; and yet he was only twenty-three years of age. "No two individuals," said one of the most distinguished spectators present, "could be more unlike each other than was that same youth to himself, before rising to address the jury and after; the brow that appeared inanimate, almost drooping, at once revealed all the consciousness of intellectual power; the whole countenance and figure of the speaker assumed a change as of one suddenly inspired. The effect his oratory produced, as well from its own exciting power, as from the susceptibility with which the audience caught up every allusion to passing events, was such as to attract the earnest attention of all who listened to him."

Among the most interested spectators present was Curran. But he looked upon the trial only from the common standpoint of his countrymen, regarding the struggles of a patriot youth of the highest promise defending his own life; for the attachment between his daughter and the brilliant young prisoner was then unknown to him. But Robert Emmet's conviction was almost a matter of course. His trial and matchless de-

fense were a work of supererogation. He was found guilty and sentenced to die.

Before the death sentence was pronounced, he was asked, by the judge, what he had to say why sentence of death should not be pronounced upon him. Though fully aware that whatever he might say would be only a cruel privilege of speaking on the brink of the grave, he arose and delivered a speech that of itself gave immortality to his name, placing it among the illustrious orators of Ireland.

He poured into the ears of the callous judge, from whom he was about to receive his sentence, a history of his own, and his country's wrongs, so full of lofty, yet fiery denunciation, and withering invective, so replete with patriotism, that he seemed the avenging genius of those wrongs—an accusing spirit speaking from the grave. He took an appeal to the future in behalf of his country, with such prophetic faith, in a manner so dauntless, that he was often interrupted by the judge, and reprimanded for proclaiming treasonable sentiments. When thus interrupted, with impressive dignity and startling emphasis, he hurled back upon the judge the sharpest recrimination. "My lords," said he, when admonished that time was passing, "My lords, you seem impatient for the sacrifice. The blood for which you thirst is not congealed by the artificial terrors that surround your victim; it circulates warmly and unruffled through the channels which God created for noble purposes, but which you are bent to destroy for purposes so grievous that they cry to heaven. Be ye yet patient. I have but a few more words to say. I am going to my cold and silent grave;

my lamp of life is nearly extinguished ; my race is run ; the grave opens to receive me, and I sink into its bosom. I have but one request to ask at my departure from this world. It is the charity of its silence. Let no man write my epitaph ; for, as no man who knows my motives dare now vindicate them, let not prejudice nor ignorance asperse them. Let them and me repose in obscurity and peace, and my tomb remain uninscribed until other times and other men can do justice to my character ; when my country takes her place among the nations of the earth, then, and not till then, let my epitaph be written. I have done."

No epitaph has ever yet been written upon his tomb. Will there ever come a time when, in obedience to his last dying words, one can be written? But he needs no memorial words carved in marble to perpetuate his name and fame. For in every beautiful field, in every rocky glen, in every city, town and hamlet of the green island where he sleeps, his name is reverentially breathed, responsive to history, poetry and song, that perpetuates it not only there, but in every part of the world where eloquence is admired and patriotism is venerated.

Within a very few hours after receiving his sentence Robert Emmet was executed on a gallows erected in Thomas street, Dublin. Many of his companions in arms, at different times, met the same fate in the same place.

It was not until after Emmet's conviction that Mr. Curran discovered the attachment between him and his daughter. By accident some of their correspondence came into his possession. The discovery filled him with sorrow, for he knew her constancy, her sensitive and af-

fectionate nature, and he knew the effect which the death of her lover would have upon her.

Two of her letters, written after Robert's condemnation, made a singular impression upon him. By them he learned how fully and how trutnfully his beautiful, his high-souled daughter had given her heart of hearts to the youth so soon to die upon the scaffold—to her, she said, now doubly dear, as something sacred, the divinity of her soul, about to be transmitted to another world, "from whence," she continued, "he will never again come to me, though I shall go to him, my own glorious, ever-loved Emmet! When you are no more I, too, shall be done with life."

These letters weighed heavily upon Mr. Curran's mind: he never forgot them until that fearful eclipse of his reason, from which he never recovered.

A few hours before Emmet's execution, Curran received a letter from him, in which he related the whole history of his attachment to Sarah. "I would rather," he said, "have the affections of your daughter in the wilderness of Ameriea, depending upon my own hands for subsistence, than to occupy the most exalted station earth could give."

To Richard Curran, Sarah's only brother, he wrote as follows:

"Oh, Richard! I have no excuse to offer for the love I bore your matchless sister, but that I intended as much happiness for her as the most ardent love could have given her. I did not love her with a wild, unfounded, transient passion; but it was an attachment increasing every hour, founded on admiration of the purity of her mind, respect for her talents and her amia-

ble, loving nature. My loved, my adored Sarah! It was not thus that I thought to have requited your affections! I had hoped to be the object to which they might cling through a long and happy life; but a rude blast has destroyed all our hopes, and her affections have fallen on a grave."

A few minutes after this touching letter was written Robert Emmet was a corpse, and Sarah Curran never forgot him—never recovered from the terrible blow which his death gave her. As time wore away her sorrow increased—"time, that wears out the deepest trace of agony, passed over her in vain." Though he had gone to the grave, she felt that death could not destroy her love for him.

Beautifully has it been said that there is something in nature connecting us with the loved and the lost—"a flower, a breath of air, a leaf, a tone of music, summer's eve, striking the electric chain wherewith we are bound," bringing all the past before us. So it was with Sarah Curran. Everything around her perpetuated the memory of her martyred hero, and kept alive an affection which she felt she could carry into eternity—one that she had never blushed to confess to her God. It was the true type of the beautiful, though dark, fable of Eros and Psyche; it was, in truth, the soul sleeping in the arms of unforgotten love."

They bore her to Italy, hoping that the buoyant air of soft Campanian skies would restore the bloom to her cheek and elasticity to her step. But there, in that delicious clime, "where the air brings sweet messages from the violet and the orange blossom," memory carried her back to Ireland; to the days when Emmet was

by her side; to his neglected grave; and slowly, softly, gently "she glided to the tomb. She did not die (die is too harsh a word), she drooped away and glided into heaven."

Thus died Robert Emmet, thus died Sarah Curran; one blow sent both to the grave. Their history is invested with much that resembles fiction; but alas! it is all too true; it is but one of the tragic incidents connected with the oft-repeated struggle of Ireland for freedom.

A YOUNG LAWYER'S TILT WITH A LEGAL BULL-DOG.

A Distinguished Lawyer's First Case—He meets a Legal Bull-dog—Conceit, Ignorance and Impudence rebuked—Rampant Speech of a Pettifogger—Ancient Lights.

ONE day, not long before the late Samuel G. Hathaway, of Elmira, was called to the bar, while he was on the way from Ithaca to the residence of his father in Cortland county, he stopped at McLain, a small village on his route, for dinner. The large number of people gathered in and about the hotel at which he stopped convinced him that some matter of extraordinary public interest was proceeding. The landlord informed him that two young men were about to be tried before a Court of Special Sessions—which, in those days, consisted of three justices of the peace and a jury—for an aggravated assault and battery.

After dinner, while seated by the bar-room fire, his attention was directed to the prisoners, who were lamenting the absence of their counsel. The hour for the trial had come, and the court was about to organize. To intensify their troubles, word was brought that their lawyer had been taken with a sudden and serious illness and could not attend the trial. Here, indeed, was a dilemma. They were about to be tried for an aggravated crime, with no counsel to assist them; what could they do? Nor was this all; they were opposed by a shrewd, brow-beating, ignorant but glib-tongued pettifogger, who could set his mouth going, go away

and leave it for an hour, return and find it still wagging with an accelerated motion—could talk about subjects of which he was utterly ignorant as readily as of those he understood—all the while ruthlessly slaughtering his native language. He was, moreover, as egotistical and abusive as he was ignorant. Hence he was a terror to witnesses and suitors whom he opposed. To be turned over, without protection, to the tender mercies of this pettifogging bull-dog was indeed a dreadful fate. At length the attention of young Hathaway was directed to a constable in attendance, who, in a low voice, was engaged in an animated conversation with the prisoners. From the manner of the speakers Hathaway was sure that he was the object of their discussion. Though intending that what they were saying should be heard only by themselves, so exciting was their subject that it caused them to raise their voices to a higher key than they were aware, and the young man could not avoid listening to the following:

"He ain't a young minister, that's sartin; for he ain't got that Bible face on him which young as well as old ministers always have. He ain't a young doctor, for he ain't got that wise look which young pillgarlicks always have. If he didn't look so confounded slick and had a little more cheek and brass about him, I'd swear he was a young lawyer; and if he is, maybe he might turn in and help you," said the constable.

"I am afraid 'Old Jurisprudence,' who is to try the case against us, would swallow him at one mouthful; but we've got to get somebody to help us, and I'm going to see what there is of him." Accordingly he walked up to young Hathaway, saying:

"See here, ain't you a lawyer or some such sort of chap?"

"No, I am only a law student," was the reply.

"Have you been a law student long enough to know anything about trying a lawsuit when there is a regular meat-axe on the other side?"

"I have been a student several years; have seen many suits tried and have tried some cases in justices' court. But do you use meat-axes in courts here?"

"Well, we've got a walking meat-axe—a two-legged bull-dog—after us here, and if we don't have help we shall soon be playing checkers with our noses in Ithaca jail," said one of the prisoners.

"I don't see how I can help you," said Hathaway.

"Why, you must turn in and help us out of the claws of 'Old Jurisprudence,' as we call old Bates, the pettifogger against us. Come, say you'll take hold and give him jesse. We'll come down with the cash."

"I suppose you are guilty by the looks of the complainant. His face looks as though it had been under a trip-hammer. I suppose you lost your temper and pounded him without mercy. But at any rate I have not had sufficient experience to try a cause like this. Besides, I am traveling and must be on my way."

"I'll tell you the case, and then you can judge whether we ought to be punished or not. You see, the complainant here is a hard customer. He has kept coming on to our land, cutting and slashing timber just as he pleased, though we've forbid him time and time again. Yesterday he was on there again with his axe, and Jim, my brother here, told him if he didn't get off, and pretty lively too, he'd help him off. At that the

fellow came at him with his axe, and if I hadn't interfered it would have been all up with Jim. But before I knew it he fetched me one with the side of his axe which sent me kiting. Then I gathered up and got a lucky blow in that gave me a good start. At it we went, and the affair ended in the fellow's getting as badly licked as any man ever was. When I was through with him his eyes had a dark blanket over them. His face looked as though a loaf of rye and Indian bread had taken its place. Now, do you think we are to blame ?"

"The man is badly punished, but, if your story is true, I think you ought not to be found guilty."

"The story is as true as preaching, and now turn in and help us. Come, say you will. We don't want to go to jail for giving that ugly cuss what he deserved."

Among the distinguishing features of Hathaway's character was his sympathy for persons in trouble. His whole life was embellished by acts of benevolence, known to none except himself and the objects of them. To this trait were allied talents of a high order and wit as polished and as keen as a Damascus blade.

The humorous and apparently honest relation which had been given of the case amused and interested him, and induced him to undertake the defense of the young men, unprepared as he was.

It was soon announced that the court was ready to proceed. The trial took place in the large hall in the hotel, which was crowded with people. With considerable difficulty the young lawyer made his way through the crowd to the large table at which sat the three justices and Bates, the pettifogger.

The prisoners took seats near their counsel. Addressing the court, he said: "If your honors please, I appear here for the defense. We are ready to proceed with the trial."

The appearance of one so young in a case so important, with a dreaded legal bully for his opponent, greatly surprised the court, jury and spectators. The pettifogger eyed him with a sort of threatening scowl, which plainly said, "I'll make short work with you."

"Where do you practice, young man?" he gruffly asked.

"I'm not in practice at all. I am a student at law."

"Oh, you are a young law student, are you? I s'pose you might as well say you are green, too. Don't know much about law neither," said the pettifogger, giving the jury a knowing wink.

"Are you ready to proceed, sir?" asked Hathaway, taking no notice of this insulting remark.

"Of course I am, and you'll find that out too, soon; we'll have your clients in jail, and maybe you, too."

"I don't think people in this country are particular about putting rascals in jail," said Hathaway.

"Why, sir, what do you mean by that?" asked Bates, savagely.

"Because you are not there," was the quiet reply, followed by roars of laughter.

This witty turn set Hathaway right with the crowd, teaching "Old Jurisprudence" that his young opponent carried heavier guns than he supposed. From that time until the close of the trial he was quite sparing of his abuse.

The jury was sworn, the counsel for the prosecution arose, and, assuming a most important air, opened the case in the following moving and animated manner :

"Gentlemen of the jury : This is one of the most important and *obstetrical* cases that I ever in all my large practice undertook to manage. In this I think you will agree with me. It is a case that touches the heart, and if you will look at my client you'll say it's a case of the head—of a broken and a contrite head—a case of the eyes, of bruised, bunged, and awfully punched eyes, and therefore an optical case! Gentlemen, in this free and enlightened country ain't a man a right to his eyesight? I reckon he has. It's one of his inestimable rights, to use the language of the Declaration of Independence. Besides, that great artist, Blackstone, says he has. There is authority for you, gentlemen, that is so pregnable, pregmatic and firm that this young sprig of the law can't get around it. What else does Mr. Blackstone say? Why, he says that one has no business to interfere with the ancient lights of another; and yet these black-hearted, bloody-handed, diabolical butchers, with malice preface—as the law calls it—have deprived my client of both his ancient lights—haven't left him even a cellar window to look out of—have licked him as blind as a beetle, mauled his face till it looks like a smoked ham half eaten up by rats; and if that ain't depriving a man of his ancient lights, according to Blackstone, then I don't know much about law. What does this young legal cub know about these solemn things? He's just come out of his mother's bandbox. What does he know or care about broken and contrite heads, punched-out eyes, and black-balled

faces? Young as he is, he's as cruel as the grave, and will tell how such things are all right, but you won't believe him, no you won't!

"Gentlemen, will you encourage this pugilarious spirit? No, you won't. How long will your eyes last, I should like to know, if you do? Look at them fellers, those red-mouthed, beastly wretches, there, looking for all the world as though they'd be happy if they could only take a claw at your eyes! See how boldly they set there confounding you and glaring savagely at me, all because they think that slick-looking chap is going to rise like a young lion out of the thicket of Jordán and pry them out of their diabolism! Gentlemen, they can't do it; he can't pry out one side of them.

"We are going to prove to you, gentlemen, that these defendants, with hellish fury, without any cause —pitched into my client, broke his head, punched his eyes until he is as blind as a beetle, closing them up as tight as the shutters to a broken-down grocery; deprived him of his ancient lights, and then tumbled him over the fence into a mudhole and made him look like a walking brick-yard. Now, gentlemen, I'm after these cruel, barbaristic wretches, and you'll gloriously sustain these most praiseworthy efforts by your verdict."

Having closed this truly moving speech, the counsel took his seat with an air which plainly showed that he believed he had made an eloquent and powerful effort.

The complainant, who bore upon his face the evidence of severe punishment, was the first witness called for the people. On his direct examination he made a very clear case of an unjustifiable and savage assault and battery against the defendants, making himself the

most meek, innocent and injured being in the world and the defendants rapacious, revengeful, blood-thirsty wretches.

Hathaway conducted the cross-examination with an intuitive knowledge of that "thumb-screw of the law" for which he was afterwards distinguished at the bar. Step by step he led the witness unconsciously along to the desired point; with much ingenuity he drew from him the fact that with a deadly weapon he began a dangerous attack upon the prisoners, and finally, that he himself was the first aggressor, injuriously trespassing upon the lands of the defendants. His cross-examination was a complete success. When it was concluded it was evident that the prosecution had failed. After the people rested, the young lawyer moved for the discharge of his clients in a short but forcible and yet modest argument. The counsel for the people opposed it with stormy, threatening and long-drawn eloquence. But the court was against him, and the prisoners were discharged, and Hathaway, with a very remunerative fee in his pocket, resumed his journey.

"This," he used to say, in describing the case, "was my first important case, and I shall never forget the opening address of 'Old Jnrisprudence' to the jury."

We have often heard him, with his inimitable power of mimicry, rehearse it in a manner equaled only by one of Martin Grover's replies to an attack of Luther C. Peat on him at the Allegheny bar.

A CELEBRATED LAWYER

In Jail for Contempt of Court—Chancellor Livingston and the Chief Justice of the State at War—Livingston Prosecuted for False Imprisonment.

AMONG the important cases that engrossed the attention of the Supreme Court in early days, no one created more profound sensation, no one settled questions of more vital importance to the rights and liberties of the citizen, to the legal profession and to the judiciary, than the memorable legal contest which grew out of the attempt of John Lansing, chancellor of the State of New York, to punish John Van Ness Yates, a lawyer, for alleged malpractice and contempt of court. The case was seriously important in another sense—it brought the Court of Chancery and the Supreme Court in collision, and determined the powers of high judicial officers over the rights of citizens.

It has been well said that the customary presence of attorneys and counselors in courts of justice and their habitual participancy in the most solemn and interesting judicial proceedings, have naturally caused them to be considered a constituent part of the court itself; that, as to many of the functions which they take upon themselves, for failure to discharge these with fidelity and efficiency they are properly held amenable to severe punishment, and that courts of justice will, therefore, see to it that their clients are protected against over-reaching by the shrewd and dishonest

lawyers, whom they may employ. Certainly lawyers should be held to as strict accountability to their clients as physicians and surgeons to their patients. It was, doubtless, these impressions that induced Chancellor Lansing to pursue and promptly imprison a counselor at law and a high official for what he deemed malpractice and contempt of court.

In 1808, John V. N. Yates was an eminent lawyer of the Albany bar, one of the masters in chancery, a man of many shining and impressive traits of character, fine literary taste, ready resources of mind, and many useful talents. By the ninth section of the act then in existence, concerning counselors, attorneys at law, and solicitors in chancery, all of these officers were forbidden to bring any action in the name of another attorney or solicitor without his knowledge and consent. At this time Mr. Yates was not a solicitor of the court of chancery. Sometime during the summer of 1808, while discharging his duties as a master in chancery, he commenced an important action in that court, for one Samuel Bacon, against Henry Garetze and another, using the name of one Peter W. Yates as solicitor, as was alleged, against his knowledge and consent, and contrary to the statute we have referred to. As soon as this circumstance was made known to the defendant's solicitor, he promptly moved for a dismissal of the complaint, on the ground that it was filed and signed contrary to the said statute. The motion was granted, subjecting Mr. Bacon, the complainant, to a bill of costs, considerable mortification, and a great delay in collecting what he deemed a just demand. Determined

not to submit tamely to this imposition, he made complaint against Mr. Yates, charging him with the acts we have described. After due notice, the complaint was presented to the chancellor, who granted an order for the arrest of the offender, and he was brought into court, a prisoner. He admitted that he had acted as a solicitor as alleged, but asserted that it was with the consent of Peter W. Yates. The latter denied that he had ever consented that his name should be thus used. The prisoner also excepted to the issuing of the order of arrest, insisting that it was illegal and unwarrantable and subversive of the rights of a citizen; that the charge against him was a crime; that the court of chancery had no criminal jurisdiction; that whether he was guilty or not, was a question which the constitution provided should be tried by a jury. But the chancellor took a different view of the case, and Mr. Yates was denied bail, and sent a prisoner to that dismal dungeon, the old Albany jail.

John Lansing was the second chancellor of the State of New York, an accomplished lawyer, a judicial officer of great ability and learning, but a man of iron will and unyielding determination, tenacious of his official dignity; and he regarded the high court over which he presided with reverential respect. Mr. Yates was highly popular with the people, and his incarceration created great excitement. He was a proud, high-minded man, inflexible in his purposes, ardent in carrying them into execution, of an implacable temper, and he determined to contest what he conceived to be the high-handed course of the chancellor towards him to the bitter end, and he carried his determination with unequaled

earnestness into effect. He retained Thomas Addis Emmet, instructing him to pursue the fight to the bitter end and to carry the war into Africa. As it was a case where the liberties of the citizen were abridged, Emmet entered into it with all his zeal, learning, eloquence, and intellectual powers.

James Kent was then chief justice of the State, and Ambrose Spencer, one of the great, learned and useful men of the past, inflexible as marble, but possessing all its purity, was then an associate justice of the Supreme Court of the State. To him Mr. Emmet applied for a writ of *habeas corpus* for the release of his client from imprisonment. It was promptly granted, and Mr. Yates was brought before Judge Spencer, who, after hearing the whole case, discharged him, on the ground that his original capture was illegal, and that his imprisonment was also illegal, unwarrantable and subversive of the rights and liberties of citizens. But the moment the chancellor heard of Judge Spencer's decision, he ordered the sheriff of Albany county to retake Mr. Yates and recommit him to prison. The order was obeyed, and the polished, high-toned gentleman and distinguished official and lawyer was again within the walls of a dungeon. Perhaps never in the course of his extensive practice was Thomas Addis Emmet more indignant at the decision of a judicial officer than he was at this decision of the chancellor; and he determined to make his every energy and all his power and influence subservient to the task of overthrowing it, and liberating his client.

The fight he made, perhaps more than any other act of his life, evinces his power and ability as a lawyer.

Very soon after the re-arrest of Mr. Yates the Supreme Court commenced its sittings at Albany. Immediately after the crier had made the usual proclamation opening the court, Mr. Emmet was on his feet moving for another writ of *habeas corpus* to bring before the court the body of Mr. Yates. He supported his motion with a brief, pertinent and learned argument.

"Your honors are aware," said he, "from the affidavits and other papers I have read, that the chancellor of the State of New York has attempted to overrule and set at naught, nay, to defy the powers of the Supreme Court of the State. He has done the unprecedented act of recommitting a man to prison, who has been discharged on a *habeas corpus*, by a judge of one of the highest courts of the State of New York, and this too without bail. He has done this in derogation of the statute in such cases. A judge of a court having no criminal jurisdiction, has, on *ex parte* evidence alone, committed a citizen to prison, there to languish until, in his discretion, he shall see fit to discharge him, exercising not only the assumed duties of judge but the duties of the Executive of the State, and I therefore humbly pray your honors that you grant the great and humane writ of *habeas corpus.*"

"The case," said Chief Justice Kent, "is of so much importance that the court will take the papers, and our decision will be announced to-morrow morning."

The next morning, on the opening of court, the chief justice pronounced an opinion, in which the prayer for the writ was granted. Mr. Yates was accordingly brought before the court, and the sheriff made a return to the writ in which he recited the history of

the case as we have thus far presented it. A hearing took place before the court, and Mr. Emmet reiterated his former objections to the order of the chancellor, insisting that his last order of commitment was a mere rule of court and not a writ or warrant, and the sheriff was not bound to obey it; that it was in derogation of the *habeas corpus* act, and void; that the original order was void because the matter laid to the prisoner's charge is a crime, made so by statute, and the only manner in which he can be punished is by indictment, and after a trial by jury, in case he is found guilty; that the conviction of Yates is founded on the affidavits of Samuel Bacon Rich, S. Lent and Peter W. Yates. It is charged that the prisoner has been guilty of contempt of court. On this charge he should have been met with the usual interrogatories propounded to persons charged with contempt, with the privilege of answering such interrogatories in detail.

It is not our purpose to follow the arguments of Mr. Emmet nor those of his opponents; neither shall we attempt to give the opinion of the court on this great question. Suffice it to say that Judge Spencer, in an able, eloquent and exhaustive opinion, held that the Chancellor possessed no authority in the first instance to order the arrest of Mr. Yates, and that his second order of arrest, after the discharge of the prisoner, was illegal and void, and that he should be discharged. Judge Spencer was sustained by Joseph C. Yates, then an associate justice of the Supreme Court, and subsequently governor of the State—no connection, however, of the prisoner. But the chief justice and associate justices Thompson and Van Ness dissented, holding that

the original as well as the second arrest of Yates was lawful. As the majority of the court was against Mr. Emmet, his client was again remanded to the custody of the sheriff, and Chancellor Lansing was again triumphant. But this decision of the Supreme Court only fired the zeal of Mr. Emmet in behalf of his client, and he determined to test the case in the court of last resort in the State, the Court for the Correction of Errors. And now the hottest part of the struggle between Emmet and Chancellor Lansing ensued. For the purpose of carrying the case to the Court of Errors, to be there reviewed, the indefatigable lawyer applied to the Court of Chancery for a writ of error, according to the then existing practice. As that court was considered always open, the writ was issued by the clerk under the seal of the court, without the knowledge of the chancellor. It commanded, among other things, the justices of the Supreme Court to send the record and proceedings, with all things touching the case, to the Court for the Correction of Errors, that the same might be reviewed, and speedy justice done the prisoner. But before the Supreme Court could obey this writ, Chancellor Lansing was again in the field, and he came down with a writ of *supersedeas*, in which he commanded the judges of the Supreme Court to desist from making any return to the writ of error, and to forthwith supersede the same. The direct effect of this would be to prevent Mr. Yates from having his case reviewed in an appellate court. Was there ever a tribunal of the dignity and possessing the power which the Supreme Court of judicature of the people of the State of New York did, placed in a situation so novel and so singular?

It was commanded by one writ, issued out of the Court of Chancery, to do a certain act, and by another writ, issued out of the same high court, not only to desist from doing the act, but to annul and supersede the first writ. Here were two original fountains of justice meeting each other in opposite directions, or rather, one great fountain impeding its own course, attempting to control the powers of a co-ordinate branch of justice. The people of the State and Nation regarded the situation with deep interest, while the jurists of the old world pointed to it as indubitable evidence of the inability of a republic to administer its own laws. But the legal Gordian knot was cut by the keen sagacity, prudence, and ready mental resources of Ambrose Spencer, who, in the early part of this singular contest, as we have seen, arrayed himself against the course pursued by the chancellor. When the justices of the Supreme Court met to decide upon the course to be pursued by them in regard to the two conflicting commands of the Court of Chancery, he proposed to make a return to the Court of Errors, with a relation that should set forth the existence of both writs, and then pray that the court above should direct the proper course to be pursued under the circumstances. This proposal was adopted by all the members of the Supreme Court, and a return was made that contained the writ of error, and the writ of *supersedeas.* It concluded in the following significant language: "The said justices of our Supreme Court are accordingly unadvised what of right ought to be done in the premises, as they humbly apprehend that it appertains to your honorable Court for the Correction of Errors, and not to them, to determine

whether the said writ of error be valid and operative or not, notwithstanding the said writ of *supersedeas*, or whether it be null and void by reason of the said writ of *supersedeas*." Such was the return made to the Court for the Correction of Errors by the justices of the Supreme Court. When it was read in the former tribunal, that court directed Abraham Van Vechten, then attorney-general of the State, and the counsel for Mr. Yates, to argue the preliminary question as to the sufficiency of the return, and whether the writ of error was not null and void by reason of the writ of *supersedeas*. The court also in its order assigned the 22d day of February, 1810, for the hearing of the arguments of counsel on the question. Never was there a more brilliant or a more deeply interested audience than the one that crowded the court-room of the Court of Errors when the argument took place.

The great renown of the respective counsel engaged, the high professional, literary and official standing of the prisoner, and high above all the novelty and importance of the question, invested the whole matter to be discussed with unprecedented interest. Was the high and almost absolute power which the chancellor had assumed to be sustained, or was this great court about to fix some limit to that power?

The chancellor himself was a member of the court; but his powers were limited to giving reasons for the decision he had made. The other members of the court were the lieutenant-governor and the senators of the State, with the chief justice of the Supreme Court, whose powers were restricted to the same limits as the

chancellor's. The argument in favor of Mr. Yates was opened by Mr. Rodman and closed by Mr. Emmet. The attorney-general conducted the argument against Yates.

His effort on this occasion was the crowning triumph of his professional life. We have so often described him as he appeared before various tribunals, that we shall now merely apply to his argument the description given of Mr. Burke's speech on the impeachment of Warren Hastings, "He astonished even those who were most intimately acquainted with him, by the vast extent of his learning, the variety of his resources, the minuteness of his information, and the lucid order in which he arranged the whole for the support of his position." Scarcely less than this can be said of that great advocate, Mr. Van Vechten, who, "eloquent as he was, impressed every hearer with the belief that there was something in him higher than all eloquence—something greater than the orator."

De Witt Clinton, Edward P. Livingston, Charles Selden, Jonas Platt, Daniel Pratt, and many other distinguished lawyers of the State, were then members of the Senate, and of course members of the Court for the Correction of Errors. After the respective counsel had concluded their arguments, the court adjourned until the 27th of February, for the purpose of deliberating upon the case and preparing opinions. The morning of the 27th of February, 1810, again saw the court-room thronged with people, eager to listen to the decision of senators upon this absorbing question. Various opinions, for and against the position assumed by the chancellor, were delivered, but when the final vote was taken, the writ of *supersedeas* granted by the chancellor

was declared to be a nullity, and the justices of the supreme court were directed to make a more full return to the writ of error, which was sustained, and in the meantime Mr. Yates was let to bail. A return in due form was made to the writ of error, and filed with the clerk of the Senate, whereupon the attorney-general moved to quash the writ, and another lengthy argument followed. The great question now before the court was whether a writ of error would lie on a judgment on a *habeas corpus*. The motion to quash the writ was denied by the court, the writ sustained, and a day appointed for the argument of the whole case on its merits before the court. The principal question to be discussed was whether the chancellor possessed the power in the first instance to order the arrest of Mr. Yates, and whether he had the right to order his re-arrest after his discharge by Mr. Justice Spencer.

The arguments made on these final questions in this great case were specimens of acute and powerful reasoning, enlivened occasionally by glowing eloquence, and were indeed among the finest forensic speeches ever made at the American bar. The various opinions given by the members of the court, exhibit a depth of learning and judicial erudition which would have done honor to Selden, Hale, Mansfield, Ellenborough or Marshall. In due time a judgment of the court was rendered, reversing the decision of the Supreme Court, which had sustained the chancellor's order arresting Mr. Yates, and that gentleman was accordingly discharged from arrest.*

He afterwards brought an action against Chancellor

*People *v.* Yates, 6 Johnson's Reports, 335.

Lansing to recover a penalty of $1,020, by a section of the *habeas corpus* act, which declared that "no person who had been set at liberty by any *habeas corpus* should be again imprisoned for the same offense, unless by the legal order or process of the court wherein he was bound by recognizance to appear, or other court having jurisdiction of the cause; and if any person should knowingly re-commit and imprison a person for the same offense, he should forfeit to the aggrieved the above sum." A long and bitter litigation followed. The case went by appeal from one court to another, until it reached the Court for the Correction of Errors, where it was decided that "the chancellor was not liable, as the statute was applicable to individuals acting ministerially, out of court, and did not apply to the acts of a court done of record, and that the superior tribunals of general jurisdiction were not liable to answer personally for acts done by them in a judicial capacity."*

Thus ended a litigation, unequaled in legal history, that occupied the attention of our state court for years, involving and settling a question of paramount interest and importance to all classes of people. Mr. Yates was afterwards, on account of his great learning, ability and industry, appointed to "add notes, references and succinct matters touching the laws under our colonial government to the revised laws of New York of 1813"—a duty which he discharged with singular success.

* Yates *v.* Lansing, 5 Johnson's Reports, 335.

BURNING OF "THE CAROLINE"—TRIAL OF ALEXANDER McLEOD FOR BURNING HER.

Singular Incideuts in the Trial—The Habeas Corpus—Joshua A. Spencer—Bank Note Trial—The Burning Bank Notes.

In the great case of the People *v.* McLeod, tried before Judge Gridley in July, 1841, Joshua A. Spencer appeared for the defense. Before commencing his address to the jury he submitted certain legal propositions to the court, to one of which the judge exclaimed, with some warmth, "There is nothing in that point, Mr. Spencer. nothing at all; and I am surprised that you press it." A slight frown lowered for a moment over the dark, animated face of the counsel, and, drawing himself up to the full height of his fine figure, said, with dignified firmness: "The court will do well to enlighten itself on that point before charging the jury." Judge Gridley, who always placed justice and the right before pride of opinion, after due reflection informed the jurors in his charge to them that his first impressions on the point were wrong, and that the counsel was right.

Erastus Root, an accomplished orator—a man of severe and critical taste, who often listened to the arguments of Hamilton and Burr, writing to a friend, said; "The words of Hamilton are so well chosen, his sentences so finely formed into a swelling current, that the

hearer is captivated; he will admire if he is not convinced. But the arguments of Burr are more methodized and compact. He will say as much in a half hour as Hamilton will in two. Burr is terse and convincing, Hamilton flowing and rapturous."

Joshua A. Spencer chose a happy medium between the intensely compact, terse style of Burr, and the flowing, florid style of Hamilton.

There was a vein of ideality in Spencer's nature, approaching something like poetic fervor, not distinguishable in and of itself, but blending in, and softening the lights and shades of his whole character. Hence, in private life he was an agreeable, instructive companion; the hold which domestic and social ties had upon him were the most pleasing traits of his character. Such was the kindness of his nature that even his prodigious professional labors did not exclude those amenities to friends, those affectionate attentions to kindred, for the neglect of which multiplied cares are often admitted as an excuse.

In some of his characteristics he resembled John C. Spencer. They were both great lawyers, and possessed in an equal degree all the resources of accurate and extensive legal learning. As was said of Mr. Canning and Lord Dudley, they differed rather in the degrees to which habit and accident had fitted them for actual business, than in the strength of their understanding and reasoning powers. Joshua A. Spencer was the most powerful declaimer, had the sharpest wit, the most original fancy. John C. Spencer's reasoning was like sharpened, well-tempered steel, cold but cutting. He never made any attempt at witticism, and was sin-

gularly vulnerable to sarcastic attacks; hence he was much annoyed by the satire of Dudley Marvin, whose witty and lively replies were often perfectly dead shots at some of his towering intellectual efforts.

"This authority, your honor, is too strong and well settled to be doubted by any one," said Marvin one day, while arguing a case against John C. Spencer.

"I doubt it very much, sir."

"Then, Mr. Spencer, you must take the consequences of doubting," said Marvin.

"What are the consequences, sir?" asked Spencer.

"Why, he that doubts shall be damned," was the quick reply. The glow on Spencer's face and the nervousness which he exhibited for some time, proved that the shaft had hit its mark.

John C. Spencer could follow an argument with more sustained acuteness than Joshua. But the latter possessed a skill in statement which frequently disposed of the matter in dispute before his opponent was aware that his flank was turned. "His thoughts were strong, therefore his words were forcible. Both were full of their subject—saw all its bearings—felt all its strength —knew all its weakness. The former knew how to illuminate what was dark in a case by throwing upon it a condensed light—could analyze his opponent's argument with mathematical precision—could resolve all its propositions into its elements, and then test them by first principles." The faculty of combining facts with feeling and thought, the promptitude of recollection, together with the powers of comparison and selection, belonged to Joshua A. Spencer—qualities which constitute the greater part of what is called genius.

John C. Spencer was a politician, statesman and Cabinet minister, possessing extraordinary administrative abilities and an aptitude for public affairs, united with much of the self-possessed gravity of Calhoun, with more natural suavity than the great Carolinian, whom he resembled in many points of character. He was distinguished throughout the nation for strength, energy and recondite thought as a political and legal writer. Like Machiavel, to whom he may be compared as a political writer, he wielded a gigantic pen, whose productions, though often bitter and dogmatic, were the sword and shield of his party.

But the political arena had few attractions for Joshua A. Spencer. He never envied or emulated the fleeting distinctions of those, who, like actors in a drama, are permitted to appear in character for a brief period, and then compelled to retire behind the scenes to give place to another. The empty pretensions, show and platitudes so necessary to the success of partisan politicians, were never adopted by him.

He firmly believed in and adopted many of those principles which rendered the Whig party a great and powerful, if not always a successful, antagonist to the Democratic party. When the Whig party was dissolved, he remarked that it had gone into the world's history, with the reasons for and against it, rendered by great statesmen—patriots for all time, all circumstances and all emergencies. He was firm, but moderate, in his political predilections. Hence no thundering denunciations of the mob, no outcry of the press, ever moved him in the least from what he believed to be his duty.

"He would not flatter Neptune for his trident,
Or Jove for his power to thunder."

In the autumn of 1845 Mr. Spencer was elected to the State Senate from the then fifth senatorial district. His well-known ability gave him a conspicuous place in the Senate. The same clearness, distinctness, eloquence and earnestness which distinguished him at the bar, characterized him as a legislator. He never indulged in anything like a sensational nature, had no taste for "legislative pyrotechnics," no desire to do something to attract attention, though of course he did much that drew censure upon him—many things which proved that, like other men, he "was warped to wrong." As Chairman of the Judiciary Committee his duties were onerous. His reports and legislative documents, though very respectable, do not exhibit that grasp of thought, power of analysis and facility of expression that is found in his oral productions.

His independence of public clamor was illustrated when Alexander McLeod, already alluded to, was brought before the Supreme Court of the State on a writ of *habeas corpus ad subjiciendum*, in May, 1841. Mr. Spencer appeared in support of the mandates of the writ.

Having been appointed United States District Attorney for the Northern District of New York, after he was retained by McLeod, he was urged by popular clamor to abandon the defense of his client, for the reason that he held the position of prosecuting officer of the United States, though the case was pending in the State courts. But he promptly and sternly re-

fused, and was therefore severely denounced by the press. Disregarding all this he appeared before the court at Albany, and contended for the rights of his client in an argument unsurpassed in reason, learning and power. As is said of the great speech of Halifax in the House of Lords, on the right of petition, if he had never made any other speech but that one, he would have been regarded as a forensic debater which few could rival. In the course of the argument he referred to the popular cry which had been raised against him. "When a counselor at law," said he, "can be driven from the defense of his client by the clamor of the public, by the attacks of the press, by anything save the acts of his client, he is unworthy the high and honorable profession which he has chosen. Public clamor, either in denouncing or applauding, what is it? It is the waving of the wind, sweeping by us to-day from the north, to-morrow blowing as strong from the south. I was retained to defend this man before my appointment as District Attorney for the general government; therefore that circumstance cannot interfere with my relation to my client."

Though the court was against him, and McLeod was remanded for trial, yet that did not detract from the laurels he won in that great contest. The brilliancy of his effort for his client swept away all prejudice of the past. In the month of July following McLeod was brought to trial at the Oneida Oyer and Terminer, the venue having been changed from Niagara county to Oneida. Joshua A. Spencer, true to his client, appeared for him in that tribunal, and after an obstinate contest succeeded in rescuing him from the grasp of the

law—the jury pronouncing a verdict of not guilty. Though the case of McLeod is one of the most important that ever engaged the attention of the State courts, it is referred to here as exhibiting very many characteristics of Mr. Spencer.* His successful defense in the case of that celebrated criminal, Ruloff, tried for the murder of his child, at Ithaca, in October, 1856; his brilliant but unsuccessful defense of Henry W. Green, are among his great professional efforts. In the latter case he was assisted by Job Pierson, an eloquent and distinguished lawyer. He was opposed by John Van Buren, then attorney-general, and Martin I. Townsend, known throughout the State as a powerful and successful advocate.

In the trial of a case Mr. Spencer always provided for every possibility. He would frequently bridge by some sudden turn when his overthrow seemed inevitable.

He was once engaged in the trial of a cause against an insurance company, for the loss, by fire, of a large amount of money in bank notes. The company alleged, in its defense, that as the bills would naturally burn very slow under the circumstances of the case, the plaintiff was guilty of negligence in not rescuing them from the flames. To establish this defense the cashier of a neighboring bank was called, who testified that it must have taken a long time for the bills to burn—time enough for their rescue by proper effort—that he had recently had occasion to burn a large number of the small bills of his bank, and that they burned very slow

* People *v.* McLeod, 1 Hill's Reports 377.

indeed. On the cross-examination Mr. Spencer asked him if they were not old and damaged. The witness answered in the affirmative.

"Had you been some time in collecting them?"

"Yes, sir; some months."

"Where were they kept?"

"In our vault, sir."

"Is your vault made of stone?"

"It is."

"That will do, sir," and the witness left the stand.

Spencer then took a one-dollar bank-note from his pocket, belonging to the same bank of those for the destruction of which the suit was brought, held it in the blaze of a candle before him at arm's length, lit it, let it fall, and before reaching the floor it was in ashes. He then took fifty one-dollar bills from his pocket, proposing to light them all at once before the jury, and if consumed before reaching the floor, that the opposing counsel should refund their value; "if not," he continued, "I will cheerfully lose them." The offer was declined, and his client succeeded.

DANIEL WEBSTER AND WILLIAM PINCKNEY.

Severe Altercation between them—Singular Trait in the Character of Webster—The Story Doubted—Pinckney and Thomas Addis Emmet—Bitter Attack of Pinckney on Emmet in the United States Supreme Court—A Magnanimous Rebuke and a Generous Apology—Webster and Hayne.

HARVEY, in his interesting work, "Reminiscences of Daniel Webster," describes a collision between William Pinckney, of Maryland, and Webster, that reveals features in the characters of these illustrious men never before described in history. They give Webster the characteristics of a bully, wanting that senatorial dignity, that patrician's superiority blended with flexible courtesy and winning grace of manners, which have always been accorded to him. Pinckney, a man of commanding figure, of many personal attractions, vigor of limb, undoubted honesty, regarded in foreign courts and at home as a gallant and chivalrous gentleman, is represented as a coward, trembling like an aspen leaf in presence of Webster, who, with blustering threats of personal violence, extorts from him a cringing apology in private and in public.

On the same day the words were spoken, according to Mr. Harvey, Pinckney and Webster happened to meet in one of the halls of the Capitol at Washington, and the latter in a peremptory manner demanded a pri-

vate interview with the former. The singular and almost dramatic scene that took place is given by the writer in Webster's own language, who, as he alleges, related it to him.

"We passed," says Webster, "into one of the anterooms of the Capitol. I looked into one of the grand jury rooms, rather remote from the main court-room. There was no one in it, and we entered. As we did so, I looked at the door and found there was a key in the lock; and, unobserved by him, I turned the key and put it in my pocket. Mr. Pinckney seemed waiting with some astonishment. I advanced towards him and said: 'Mr. Pinckney, you grossly insulted me this morning in the court-room; and not for the first time, either. In deference to your position and the respect in which I hold this court, I did not answer you as I was tempted to do on the spot.' We began to parley. I continued: 'You know you did it; and don't add another sin to that; don't deny it; you know you did it, and you know it was premeditated; it was deliberately, it was purposely done, and if you deny it you state an untruth. Now, I am here to say to you once for all, that you must ask my pardon, and go into court to-morrow morning and repeat the apology, or else you or I will go out of this room in a different condition from which we entered it.' I was never more in earnest in my life.

"He looked at me and saw that my eyes were pretty dark and firm. He began to say something; I interrupted him. 'No explanations,' said I; 'admit the fact and take it back; I do not want another word from you except that; I will hear no more explanations; nothing but that you will admit it and recall it.' He

trembled like an aspen-leaf. He again attempted to explain. Said I, 'There is no other course; I have the key in my pocket, and you must apologize or take what I have to give you.' At that he humbled down and said, 'You are right; I am sorry; I did intend to bluff you; I regret it, and I ask your pardon.' 'Now,' said I, 'one promise before I open the door, and that is that you will, to-morrow morning, state to the court that you have said things which wounded my feelings, and that you regret it.' Pinckney replied, 'I will do it.'"

Bishop Pinckney, of Baltimore, his nephew, in a lengthy letter published in the Law Journal of August 2, 1879, denies with much earnestness the authority of this story. He insists that the well-known characteristics of those illustrious men are strongly against its truth.

"Either," says the bishop, "Mr. Webster did say all that is reported of him by Mr. Harvey, or Mr. Harvey made it up, or else Mr. Harvey is in a grievous error." . . . "I turn then," continues the bishop, "from Peter Harvey, who has recorded it, to the many warm friends of Mr. Webster, and address to them this my solemn remonstrance, and I greatly mistake the character of the men to whom I appeal, if they do not discard the deed as one of which Mr. Webster could not possibly be guilty." Again he says, "Mr. Pinckney's courage had been too often tested to be questioned. Of powerful physical frame, and moral nerve that few men possessed in an equal degree, he had no occasion to quake and tremble in the presence of Mr. Webster." "Then again," says the bishop, "there are no grand jury rooms in the Capitol, and never have been."

On the whole, he makes a strong case against Mr. Harvey.

Whatever are the real facts in the case, it is certian that Thomas Addis Emmet, the great Irish orator and lawyer, once extorted an apology from Mr. Pinckney in open court. It was not done by ruffianly threats and bluster, it was given in no craven fear—with no aspen-leaf trembling, no cowardly submission to the demands of a bully. But it was done in a manner that evinced the magnanimity, chivalrous sense of honor, and graceful courtesy that distinguished the character of William Pinckney, the most eminent lawyer, orator and diplomat of his age. It was as beautiful in thought and diction as was the graceful, ingenuous and affecting reproof that extorted it.

The circumstance to which I allude took place during the argument of the great case of the Nereide, before the United States Supreme Court, in which Emmet and Pinckney were opponents. It will be found in Cranch's Reports, vol. 9, page 398.

It involved the novel question of international law —whether a neutral could lawfully lade his goods on board an armed enemy's vessel. The extensive learning and peculiar experience of Mr. Pinckney in maritime law was generally acknowledged. The case elicited all his energies—excited all his professional ambition. Indeed, he could not brook the thought of defeat. He contended that the neutral property found on board the Nereide, an armed British vessel captured by our seamen in the war of 1812, was liable to condemnation, especially as Mr. Pinto, their owner, placed them there, knowing it to be a belligerent cruiser, and was on board

at the time of its captivity; therefore, the goods lost their neutral character; and even though their owner did not aid in the armament of the vessel, and did not offer any resistance to its capture, if a neutral takes the protection of a hostile force, he must take the consequences. On the other hand, Mr. Emmet claimed that the goods did not lose their neutral character by being found on board the vessel, nor in consequence of resistance made by the armed vessel, notwithstanding he had chartered the whole of it, and was found on board when captured; that the act of arming was the act of a belligerent party; that the neutral goods did not contribute to the armament, further than the freight, which would be paid if the vessel was unarmed; that neither the goods nor the neutral owner were chargeable with the hostile acts of the belligerent vessel if the neutral took no part in the resistance.

Mr. Emmet was embarrassed by a contemporary decision of an opposite character, on the same point, made by the English High Court of Admiralty in the case of the Fanny. The case at bar was one of infinite importance. It involved millions of dollars; it would make or break the fortunes of thousands whose property depended upon it.

Emmet's reputation was not as extended as his opponent's. He was known only as a lawyer, but his legal knowledge and polemical skill were almost unequaled except by his chaste and polished diction. Few lawyers ever appeared in court better prepared to grasp the great questions involved in their case than Emmet and Pinckney on this occasion.

The argument took place before Chief Justice Mar-

shall, and Brockholst Livingston, Associate Justice of the Supreme Court. The great interest which the case elicited was indicated by the unusual composition of the audience that thronged the court-room: senators and representatives in Congress, foreign ambassadors, heads of departments, cabinet ministers and diplomats were present, while the gallery was filled with a brilliant assemblage of ladies.

Mr. Pinckney's argument displayed an order and kind of power never before exhibited. He swept the whole ground with his miraculous intellect and learning. His finely-chastened imagination was a powerful auxiliary to his argument—the wizard that sent his shafts of logic home.

When Mr. Emmet rose to reply, the bar and the audience believed that he was about to undertake a stupendous impossibility. He was known only as a lawyer, giving all his energies and ambition to his profession understanding the subtleties, but disliking the detail of American politics. His logical powers were only equaled by his graceful and modest diction, powerful in its purity and comprehension.

His reply to Pinckney was one of his most powerful forensic efforts. He had surveyed the case from an eminence which commanded its full extent; had scanned the entire line of his antagonist's array with a bold and vigorous grasp of thought; had determined upon the point of attack with the inward sagacity of a great captain.

It was an argument that Pinckney had not expected to meet. It shook his own position to its very center. In his reply he made a severe personal attack upon Em-

met. It was characterized by that tremendous and pungent invective, that merciless satire, in the use of which he was excelled by no man. It took the bench, the bar and audience by surprise. Every person in the room glanced fearfully first toward the speaker and then toward Emmet, who was the only emotionless person in the room. Only once did his features lose their imperturbability, and that was when Pinckney, with withering satire, referred to Emmet's imprisonment in Fort George, Scotland, and his release therefrom on condition that he would leave England and Ireland forever. Mr. Emmet had severely criticised the English decision in the case of the Nancy, to which I have referred. Such was his hatred of England that he made some bitter comments upon her maritime laws. This gave Mr. Pinckney an opportunity to make the allusion which I have described. "It is natural," said he, "that the gentleman, whose arm has been raised in rebellion against the British government and his own sovereign, and who for his treason was confined for several years in an English prison, should dislike the laws he himself had broken, especially as there is an eternal interdict to his return to the land of his birth." During the utterance of these words the lines of Emmet's mouth twitched nervously, a deep flush suffused his face, and he involuntarily grasped a book that lay near him on the table. In another moment, however, he regained his composure, and the cold, almost listless look returned, when every ear in the room was tingling at the irony of the great speaker.

At last he closed, and Emmet rose to reply. Chief Justice Marshall bent forward to catch the first sen-

tences that fell from his lips, while the audience seemed lost in eager expectation. For a moment "he stood coiled and concentrated, indifferent to all but the power that was within himself." He then proceeded with his reply, cool, collected and unimpassioned. It was a masterly conclusion to his unequaled opening—a subtle concentration of the proposition he intended to establish. But he made no allusion to Mr. Pinckney's attack. When, however, he drew his argument to a close, he said: "And now, your honors, I have done. I leave the further consideration of the case to my learned and distinguished associate, Mr. Dallas. But before I take my seat I ought, perhaps, in justice to myself, to make some reply to the personal allusion which my great opponent has deemed proper to make concerning myself; but this is a species of warfare in which it is my good fortune to have had little experience; it is one that I never waged. I am perfectly willing that my learned opponent shall have all the laurels he has sought to win in waging it. When I came to this country I was a stranger—nay, more, I was an exile from the land of my birth, as dear to me as the life-drops in my heart, but no dearer than this glorious country of my adoption, in which I have found an asylum and a home, and a welcome almost paternal; in whose courts of justice I have been warmly received as an advocate from its bench and bar. Never, sir, until this day, have I experienced the least unkindness from my professional brethren. Your honors, I appeal to you, have I done anything here to-day to merit a different treatment? I came here imbued with the deepest respect—let me say reverence—for the learning and elo-

quence of Mr. Pinckney, and he is the last man from whom I should have expected personal observations of the kind to which this court, this bar and this audience have just listened. It is true I was for two years within the walls of an English prison, because I dared lift my voice in a court of justice in behalf of my countrymen on their way to the scaffold and the halter, for the same acts of patriotism that made this great republic all she is.

"Should my opponent taunt me for this? He whose grand and sweeping eloquence receives its beauty from his own burning patriotism, should sympathize with the victims of oppression wherever found. For him I have no indignant words, for I know that when a little reflection shall bring the events of this day before him, that generosity and chivalry which has ever made him a favorite in the courts of foreign monarchs, and caused him to be beloved at home, will bring before him the injustice he did me to-day, with regrets which his noble nature knows how to feel keenly. Besides, I have been taught in early life never to return railing for railing. In conclusion, let me say that the gentleman has filled the highest office his country can bestow, at the Court of St. James and in that of the Emperor of Russia. Surely he could not have lost his innate courtesy in those polished courts."

The profound silence which pervaded the court-room during the delivery of this impressive speech continued several minutes after Emmet took his seat. It touched the great heart of Marshall; it gained a generous response from the bar and the brilliant audience; it placed a new wreath on the brow of the "exile lawyer."

Mr. Pinckney, whose eyes seemed riveted upon his opponent during this address, arose and tendered him a beautiful and generous apology.

"I cannot," said he, "allow this opportunity to pass without doing justice to my honored and distinguished opponent. The manner in which Mr. Emmet has replied to my too hasty language, reproaches me for its forbearance and urbanity, and could not fail to hasten the repentance which reflection alone would have produced, and which I am happy on so public an occasion of avowing. I offer him a gratuitous and cheerful atonement; cheerful, because it puts me right with myself, and because it is tendered not to ignorance and presumption, but to the highest worth of intellect and morals, enhanced by such eloquence as few may hope to equal; to an interesting stranger, whom adversity has tried and affliction struck severely to the heart; to an exile whom any country might be proud to receive and every man of generosity would be ashamed to offend." There were few eyes in the court-room that were not suffused with tears during the delivery of this address, unequaled in any language. It completely subdued the audience until a murmur of applause broke over it. The decision of the case was a brilliant triumph for Mr. Emmet.

Daniel Webster often appeared in the New York Supreme Court, in the Court for the Correction of Errors, and in the Court of Appeals. Though most of his life was spent in great matters of state and diplomacy, he was an accomplished lawyer, and entered into the trial of causes something as Lord Brougham did in

the midst of his career as the first of British statesmen —with all his heart and soul.

He was associated with Thomas Addis Emmet in the great case known as "The Sailors' Snug Harbor Case;" his opponent was William Wirt.

It was during the argument of this case that Mr. Emmet was stricken with paralysis, and died in a very short time.

Webster was an accomplished equity lawyer, and was very often engaged in the argument of cases before the chancellor of New York, particularly Chancellor Walworth.

We have described, in another part of this work, Walworth's disagreeable habit of interrupting counsel during the argument of cases before him.

On one occasion Webster was arguing a case on appeal to the chancellor, who, with the commencement of the argument, began by suppositions and questions to interrupt him.

"Suppose, Mr. Webster," said the chancellor, "that the trustees had applied the funds to the purchase of the stocks, which you speak of?"

Webster contracted his heavy, dark eyebrows and turned his massive head with an aggressive movement, and growled out:

"I am not considering that now; I will ask your honor to wait until I take up that question."

It was not long before the chancellor again broke in upon him, when, to use the language of another, "Webster, looking like an embodied storm, in muttering thunder, observed—with those large, expressive eyes

which seemed to have deep sockets for them—bearing upon his honor—

"'Will the learned chancellor allow me to be edified after the adjournment of court?'"

This silenced the loquacious chancellor, and Webster proceeded with his argument. Mr. Webster's manner of speaking at the bar and in the Senate was always impressive and commanding.

Perhaps in no instance did his manner amount so nearly to sublimity itself as it did when delivering his unequaled argument in answer to Governor Hayne, of South Carolina.

The scene in the Senate Chamber during its delivery has been seized upon by a great painter, who has produced from it a painting full of thrilling interest. It is twenty-two feet square, protected by a massive, beautiful frame, on which appear in large letters the memorable words with which Webster closed his speech—"The Union, now and forever, one and inseparable."

With vivid conception—with perfect truth to nature—"with that equality of execution" which makes a whole so predominate over its parts as to excite the idea of uninterrupted unity, amid the greatest variety," the United States Senate Chamber is represented as it appeared during the delivery of a speech which rendered its author a sovereign of eloquence.

Each Senator appears in his seat, easily recognized by his form and the expression of his features. Calhoun, then President of the Senate—"the iron man that looked as though he never was born,"—whose sympathies were strongly with Hayne, occupies the Speaker's chair. His brow still darkened by the frown that

lowered menacingly over it, when suddenly interrupting Webster, he said :

"Does the Chair understand the Senator from Massachusetts to say that the person now occupying the Chair has frequently changed his opinion on the subject of internal improvement ?"

The courteous, dignified but adroit answer of the senator, which followed this question, while it prevented further interruption, did not remove the cloud from the brow of the great Carolinian.

"From nothing ever *said* to me, sir," replied Webster, "have I had reason to know of any change in the opinion of the person now filling the chair of the Senate. If," he continued, slowly and emphatically, with a look full of meaning, perfectly understood by Calhoun, "If any such change has taken place, I regret it, I deeply regret it, sir."

Webster is represented standing nearly in front of the Speaker's desk, dressed in a blue coat with gilt buttons, buff vest, white necktie and black pants. Everything about him is so natural, so life-like, that one is struck with reverence, almost with awe, for there stands the matchless orator commanding "a list'ning Senate,"—the most peerless and august body in the world. His left hand lightly touches his desk ; his right arm is extended, his face is full of life, emotion and character. The vigor and fertility of conception with which his intellectual impulses are delineated, give an epic grandeur to his face, animated with the greatness of the occasion and his subject ; while the features of the Senators who surround him glow with irrepressible

emotion, and the vast audience, which fills every available space in the Senate Chamber, is as silent

> "As the unbreathing air,
> When not a leaf stirs in the mighty woods."

A little to the right of Webster sits Mr. Hayne, his hands tightly clenched together, leaning on the table before him ; his face, turned towards his great antagonist, is overspread with a troubled, anxious, gloomy look. But the haughty curl still lingers on those lips that recently portrayed with such animated eloquence the glory of South Carolina, and swelled the pride of her chivalry with his chaste, beautiful and inspiring laudations. There is Benton, egotistical, aspiring and great, the friend, supporter and admirer of Hayne, who, when the latter closed his speech, to which the Senator from Massachusetts is replying, arose, "and with many honeyed commendations of it, suggested that the impressions which it had produced were too charming and delightful to be disturbed by other sentiments or other sounds, and proposed that the Senate should adjourn." There, too, near the center of the Senate Chamber, sits Henry Clay, whose magic eloquence convinced, charmed and subdued ; there, too, is Clayton, Grundy, Bell, Bayard, Tazewell, and other great lights of the American Bar and the American Senate in the period of its greatest glory.

Looking again at Webster, his form seems to dilate with the magnitude of his subject—a subject that involved the most important interests and even the duration of the republic. What orator of the past ever occu-

pied a place so conspicuous, hazardous and responsible? "With a competitor unequaled in reputation, ability and position; a name to make still more glorious, or lose forever; an audience comprising not only persons of this country, most eminent in intellectual greatness, but representatives of other nations, where the art of eloquence has flourished for ages." Well might the very hazard of the occasion stimulate him. He had seen his friends from New England droop beneath the powerful, vivid language of Hayne, by whom the star of South Carolina was rendered brilliant in its ascension above that of Massachusetts. He knew that the representatives and people from the North felt humbled and dejected. He knew they doubted his ability to reply to a speech apparently so unanswerable. He had observed the exultation of the South Carolinians, "and he awaited the time of the onset with stern, impatient joy. When it came, his spirits rose with the occasion; he felt like the war-horse of the Scriptures, who paweth in the valley and rejoiceth in his strength—who goeth out to meet the armed men; who sayeth among the trumpets, ha! ha! and who smelleth the battle afar, the thunder of the captains and the shoutings."

History records no oratorical victory like that won by Webster on this occasion. If Hayne closed his speech in brilliancy and power, Webster closed his in perfect triumph. It has been well said that the speech of the latter is unequaled by the phillipic orations of Demosthenes—the consular ones of Cicero—nor in whatever class the speeches of Burke, Pitt and Canning may be placed—that it is imbued with the very essence of immortality.

After the discussion between Hayne and Webster closed, Mr. Benton, smarting under the defeat of his Southern champion, closely, critically and bitterly assailed Webster's speech, applying to it that powerful satire which, at times, was at his command. Of Benton's effort it is sufficient to say that it is forgotten, while that of Webster, notwithstanding its defects, grows brighter with the flight of time. The scene which the painting in Faneuil Hall represents is no embodiment of an artist's dream. It is a scene which lives in history, and is sent down to posterity by the historic muse. In studying it there is something in the form and features of Webster that causes one to think the precise point of time which the artist has seized is the period in the delivery of his speech when, in speaking of the perpetuity of the Union, he alludes to Faneuil Hall, "where American liberty raised its first voice—where its youth and manhood were sustained and matured, there it still lives, where its youth was first nurtured and sustained, . . . and it will stand in the end by the side of that cradle in which its infancy was rocked."

The effect of this painting on the mind is perfect. Everything is supplied which could be suggested by historic facts in their minutest detail. The action and attitude of the figures are natural—full of simplicity and the style of truth. There was once, as it is said, a painting in the gallery of one of the Dukes of Orleans, representing the infant Moses about to be exposed by his mother to the waters and monsters of the Nile. The figures were painted with extreme vigor and force. The face of the mother, averted and agonized, speaking

in all the eloquence of grief, the terrible necessity which impels her to leave her infant there; the departing father, with eyes upturned to heaven, as if supplicating its aid for the helpless boy that still clings to him in terror. All this strikes the beholder with sorrowful interest. It is said, in this absorption of human interest, the exquisite background, with its wooded scenery and architectural magnificence, is forgotten. Nothing is observed but the thrilling scene in the foreground; so it is with the scene depicted by the painting in Faneuil Hall. Webster, with his "presiding brow, his large unworldly eye, incapable to be fathomed, his lip and chin, whose firmness is as of chiseled perfect marble, and profound sensibility," absorbs all interest in the background, and centers all thought upon him. The gods, in their wrath, turned Niobe into stone, but she was restored to life by the chisel of Praxiteles. So the form of Webster was laid in the grave, but the pencil of the painter rescued it from decay.

SINGULAR CASE OF MISTAKEN IDENTITY IN A CRIMINAL CASE.

Narrow Escape of an Innocent Man from Conviction of the Crime of Bigamy—His Striking Resemblance to the Real Criminal—He is Saved by a Singular Circumstance in the Court-room.

THE question of personal identity is often one of great difficulty and importance in the trial of criminals. Indeed, it often enters into and embarrasses trials of civil actions. It has often been the case, that a person has been indicted and brought to trial for a crime committed by another, owing to a striking resemblance to the real culprit.

The great forger, Monroe Edwards, tried and convicted in New York city in 1841, for a stupendous forgery, nearly escaped punishment because of his strong resemblance to one Alexander Powell.

A case was tried at the York Assize in England, where a man was brought to trial on the charge of burglary, convicted, and sentenced to transportation, who so perfectly resembled the real felon that a large number of very reputable citizens testified that they knew him to be the real criminal.

But one of the most interesting cases of mistaken identification on record was that of Joseph Parker, indicted and tried at the New York Oyer and Terminer in October, 1804, for bigamy.

Parker was a resident of Haverstraw, N. Y., and subsequently a resident of the city of New York. The indictment alleged that "Thomas Hoag, otherwise Joseph Parker, in the county of Rockland, now of the city of New York, on the 8th day of May, 1797, at the city of New York, was lawfully married to Susan Faesch; that afterwards, to wit, on the 25th day of December, 1800, at the county of Rockland, his said wife being then living, he feloniously married one Catharine Secore."

On the trial of the indictment, under a plea of not guilty, the following evidence was given touching the guilt and innocence of the prisoner.

Hon. Benjamin Coe, one of the judges of the Court of Common Pleas of Rockland county, was the first witness called for the people, who testified substantially as follows:

"I know the prisoner perfectly well; he came to Rockland to live in September, 1800, and there went by the name of Thomas Hoag; there was a man with him whom he called his brother, but they did not look like each other at all; the prisoner was in my employ for about a month, and boarded at my house; he was at my table with me every day. On the 25th day of December, in the forenoon, he came to me stating that he was to be married that evening, desiring me to perform the ceremony; he said his intended wife's name was Catharine Secore; in the evening I married him to Miss Secore; I am confident of the time, because on that day one of my children was christened; during all the time Hoag remained in Rockland county I saw him continually; I am therefore as fully satisfied that

the prisoner is Thomas Hoag, as I am that I am Benjamin Coe."

John Knapp testified as follows: "I am a resident of Haverstraw, N. Y.; I know the prisoner; first became acquainted with him early in the year 1800; he then went by the name of Thomas Hoag; I knew him intimately over a year, during which time I saw him every day; I attended his wedding; he had a scar on the bottom of his left foot; one day he challenged me to leap with him; I accepted the challenge, and I outleaped him; Hoag then said that he did not jump now as far as he once could, because he received a severe wound on his left foot by stepping on a drawing-knife; he then took off his shoe and exhibited the scar on his left foot to me; it showed itself very plainly; I am confident that the prisoner is Thomas Hoag."

Catharine Conklin was the next witness called by the District Attorney. She made the following statement:

"My maiden name was Catharine Secore; I am now the wife of one Philip Conklin; I became acquainted with the prisoner early in October, 1800, at an apple-paring bee or party; he had not been at Rockland long; was struck by his very handsome face and form; I saw him after that quite often; he seemed quite as well pleased with me as I was with him; after a while he asked permission to visit me; I consented; our courtship ended in an engagement to marry, and on the 25th day of December, 1800, we were united by marriage; he lived with me until the end of March, 1800, when he left me, saying he was going to Boston; I did not see him again for two years; I remember on

the morning he left he said he had something of importance he wanted to tell me ; there was a person with him whom I supposed was his brother, as he had been introduced to me as such ; this man said : 'Tom, what do you want to talk about that for? Let that go now.'

"He then said to me : 'Kate, I'll tell you that some other time.'

"Hoag was an affectionate, considerate and good husband, and I was tenderly attached to him ; I was very proud of him, for he was, and is now, as all can see, a very handsome man." Turning to the prisoner she exclaimed, in an excited manner :

"Oh ! how often I have combed those dear locks of yours, Thomas !—how often I have held that dear head in my lap."

"Have you any doubt, madam, that the person on trial is the man whom you married as Thomas Hoag ?" asked Mr. Riker, the District Attorney.

"Not in the least, sir ; I know he is the same man."

Moses Anderson was called as witness for the people, who said :

"I reside at Haverstraw, N. Y.; I have lived there since August, 1791 ; I am very well acquainted with the prisoner ; he was introduced to me as Thomas Hoag ; he spent much of his time at my house during the year 1800 ; he was in my employ some time ; while he was at Haverstraw I saw him constantly."

"Is there anything particular about the prisoner that enables you to identify him ?" asked the counsel for the people.

"He had a scar on his forehead, made, as he said, by the kick of a horse; he had a singular mark on his neck; his speech was singular; his voice is very much like a woman's, and he has a hitch or lisp in it."

This testimony was strongly against the prisoner, because they were peculiarities which he was known to have.

The witness continued: "The prisoner also had a scar on his left foot, between the ball and heel, made, as he said, by stepping on a large and very sharp drawing-knife; I remember his marriage in December, 1800; he took tea at my house that day."

"Are you sure, witness, that the prisoner has the scar on his left foot that you have described," asked the counsel for the defense.

"Yes, sir; I am quite sure."

"Why are you so sure?"

"Because I have seen it."

"Under what circumstances, and when?"

"I cannot tell exactly; but I think he showed it to me on one occasion when he had taken off his shoes, sitting by the fire just before going to bed."

"Do you remember anything he said about it?"

"Yes, he said something about jumping with Knapp; that Knapp beat him because he cut his foot once with a drawing-knife. 'If it hadn't been for that,' he said, 'I could have beaten Knapp easy enough.' I think he then showed me his foot and the scar on it, and I saw it once after that."

Lavinia Anderson gave the following evidence for the people:

"I know the prisoner very well indeed; his name is

Thomas Hoag; he has been an inmate of our house much of the time since he came into the country; he and his brother used to come to our house every Saturday evening, and remain until Monday morning; he had his washing done there; the prisoner, if he is Thomas Hoag, has a scar upon his forehead and one on his left foot."

The scar on the prisoner's forehead was visible to all who sat near him.

"About a year ago," she continued, "he had a lawsuit in the city of New York; it was difficult to prove that the prisoner here was the right man; so much was said about it that I was determined to see and judge for myself; I went to his house, but he was out; I found him not far off, and I spoke to him; I knew him at once by his voice, it was so like a woman's; and then he lisped, and I saw the scar on his forehead; Hoag is always shruggin' up his shoulders just as you see the prisoner does; it is quite impossible for me to be mistaken; I know the prisoner is Thomas Hoag."

The testimony of Nicholas W. Conklin was peculiarly strong against the prisoner in identifying him as Thomas Hoag.

"The prisoner," said Mr. Conklin, "lived very near me in Rockland county; his name is Thomas Hoag; I cannot be mistaken; he has been in my employ considerable, and I have, in one way and another, had much dealing with him; I also took very close notice of him, as I understood he was paying his addresses to Catharine Secore, and, being a stranger, I thought I'd watch him; he lived in one of my houses awhile after his marriage with her; I afterwards met him in

New York city ; I knew him immediately by his gait, by his smile ; he has a very peculiar smile ; everything about him was like Thomas Hoag, and it was Thomas Hoag ; he appeared to be about twenty-eight years old, and that is about the age of the prisoner."

Gabriel Conklin, called for the people, stated as fc lows :

"I live at Haverstraw, and know Thomas Hoag ; ne was often at my house ; the prisoner is the same person, unless there can be two persons so exactly alike that no one can discover any difference between them ; the prisoner there must be Thomas Hoag, for he has a scar on his forehead just as Hoag has, and another on his lip, as you see the prisoner has."

Several other witnesses for the prosecution identified the prisoner as Thomas Hoag, in a singularly intelligent and striking manner. The evidence of all the witnesses was corroborated by many convincing circumstances.

They were all subjected to the most searching and exhaustive cross-examination, but nothing was elicited to shake their testimony in the least. Indeed, it grew stronger and stronger under the ordeal.

When the District Attorney rested, the counsel for the defense, in opening his case to the jurors, said, among other things :

"Gentlemen, the people have, as I hope to show you by indubitable evidence, indicted and brought here for trial the wrong man. The wretch who committed the crime which has been proved to have been committed, is still at large ; and unless I can satisfy you by evidence which will overthrow the apparently powerful evidence

of the public prosecutor, an innocent man will be condemned in his stead. Can you imagine anything more terrible than this? A felon at large, and an innocent man, a husband and father, torn from his family and incarcerated in prison in his stead. But I hope to save him from such an awful doom. There is one circumstance—one fact—by which, if by nothing else, I expect to do this. Never, in all my practice, in all my reading, have I heard of a case like this."

Joseph Chadwick, the first witness called for the defense, testified as follows:

"I have been acquainted with the prisoner several years; his name is Joseph Parker; I reside in the city of New York; am a rigger by occupation; the prisoner follows the same business; he has been in my employ a good deal; he began work for me in September, 1799, and continued to work for me until the spring of 1801; during that time I saw him nearly every day."

The witness then produced his books, by which it appeared that he paid Parker for his work as follows: On the 6th of October, on the 6th and 13th of December, 1800; on the 9th, 16th and 28th of February, and on the 11th of March, 1801; that from May, 1800, until May, 1801, Parker lived in a house in New York belonging to Jonathan Betts. During all that period, and much of the time since, I have been well acquainted with the prisoner.

Benjamin Bateman was called and sworn for the defence. His statement was as follows:

"I live in the city of New York; am well acquainted with Joseph Parker, the prisoner at the bar: I have known him several years; in the latter part of the year

1800, he was engaged with me in shipping some merchandise to New London, Conn.; we commenced our engagement on the 16th of September, 1801, and continued together the remainder of the month; I saw him every day during all that time; we were engaged again together during all the month of December, 1800; we were also engaged most of the month of January, 1801; I know I was engaged with him on the 25th of December, 1800, for I never before or since worked on Christmas day, and I remember that Parker lived that year in a house belonging to Jonathan Betts; I was one of the city watch, and so was Parker, and have served with him from that time down to the present time; I don't think he has missed a day."

Elizabeth Mitchell, sworn for the defense, testified as follows:

"I know the prisoner very well; his name is Joseph Parker; during the years 1800 and 1801 he lived in a house next to us; it belonged to Mr. Betts; I was very intimate with him and his family; he was one of the city watch, and I used to hear him rap with his stick on his door for some one of his family to let him in mornings; I remember seeing him on Christmas day morning, 1800; I offered him some spirits to drink, but he preferred a glass of wine, and I gave it him; he never lived but one year in Betts' house, and from that time to the present I have been on terms of intimacy with Parker's family."

Edward Mason was called as a witness for the defense, and stated as follows:

"I have been acquainted with the prisoner for four or five years; his name is Parker; I recollect he had

been one of the city watch ; I was also one of the watch, and served with him for some time ; at first he served as a substitute, and then a few days before Christmas, 1800, he was placed on the roll in the place of another watchman who was taken ill ; I am certain this was the time, because that was the only instance I ever served upon the watch."

Many other witnesses were called for the defense, all of whom testified in the most positive manner that the prisoner was Parker, and not Hoag. But what seemed to seal his doom was the number of circumstances that identified him as the guilty man. The shrugging of his shoulders, the woman-like sound of his voice, his lisping, the scar on his neck and face, all perfectly apparent.

The reader will remember that several witnesses testified very positively to the scar on the left foot of Hoag, made by the drawing-knife.

At the close of the evidence, and before counsel for defense commenced his address to the jury, he proposed that the prisoner should remove the shoe and stocking on his left foot, and exhibit that member to the jury. The district attorney, confident that the scars would be as plain there as on the face and neck of the accused, consented.

Amid the most profound silence and deep suspense, the sheriff proceeded to bare the prisoner's foot, and lo ! not a scar of any kind appeared upon it. The suggestion was then made that the witnesses were mistaken in the scarred foot. The other was then made bare, and that was as free from scars as the other.

After the respective counsel had addressed the jury,

Hon. Jacob Radcliff, who presided at the trial, in a brief, pointed charge, said, among other things :

"Gentlemen, this is a most important and interesting case. Its difficulty exists in the occurrence of a question that often embarrasses courts and juries. It is a case in which the court cannot aid your deliberations, as it is one purely of fact, in which no question of law arises for the court to instruct you upon.

"It is clear that there are two individuals who resemble each other so very strongly that persons perfectly well acquainted with them cannot distinguish one from the other ; that one of these persons is guilty of the crime charged in the indictment, there can be no doubt. What intensifies the difficulties in this case is the fact that the accused on trial has certain marks upon his person, certain habits, certain peculiarities of voice, and other appearances, which the real perpetrator of this crime has. But you will remember that several of the witnesses for the people testify very positively that the man Hoag had a scar on the bottom of one of his feet, made by a severe cut. This scar is described with great minuteness by them. It appears, however, that the accused, whose feet have been exhibited here in court to you, have no scar or blemish upon them. This is a very strong circumstance, gentlemen, for your consideration, and you will give it all the weight in favor of the accused it demands. If it raises a reasonable doubt —a doubt founded on good sense and judgment—that he is not guilty, he will be entitled to a verdict of acquittal at your hands."

The jury retired, and after a brief absence returned with a verdict of not guilty, and Parker was discharged.

For many years he and Mrs. Conklin resided in the city of New York. The latter never surrendered the belief that she had been married to him. Occasionally she would meet him and denounce him for his cruel desertion and duplicity. She would say to her daughter,

"There, Sarah, is your father—your cruel, heartless father."

There is no doubt that the lady, down to the day of her death, firmly believed that Parker was the father of her daughter—the man that married her.

HUNTED DOWN BY ENEMIES.—A HISTORIC TRIAL.

Force of Circumstantial Evidence—Fate of David D. Howe—Dreadful Revenge and its Provocation—John C. Spencer's Great Argument—A Fearful Prophecy Fulfilled.

ONE of the most important and interesting criminal trials recorded in legal history was that of David D. Howe, which took place at Angelica, New York, in June, 1824. Although generations have passed away since then, the testimony in the case,—the subtlest, and yet the most convincing in the wide range of presumptive evidence—still commands the attention of judges, lawyers and legal writers.

It was a series of circumstances, many of them apparently unimportant and shadowy, upon which the people relied to convict the accused of a "black and midnight murder." His execution was one of the first, if not the first, that ever took place in the southern tier counties. With matchless skill and fatal energy, that great lawyer, John C. Spencer—the counsel for the people—seized upon these circumstances, grouped them together, until each tended to throw light upon and prove the other, reaching a conclusion that overthrew an ingenious hypothesis upon which was founded a formidable defense.

The history of the causes which led Howe to the commission of the crime of which he was accused, needs

little of the creative fancy of the tragic poet, or ardent and tenacious imagination of the novelist, to render him almost as great in suffering as was Hecuba or Othello.

It is the history of an esteemed and prosperous citizen, a beloved husband and father, surrounded by envious, revengeful, determined and powerful enemies, "who wrought upon him in the extreme," intent upon his ruin. A long time, single-handed and alone, he kept them at bay, returning heavy blows for thrusts that were accelerating his doom. At last, hunted down and driven to despair, there remained for him only the hardening of his heart, and an uncontrollable desire for vengeance.

David D. Howe was a native of Rensselaer county, N. Y., where, for several years, he was a prominent and successful turnpike contractor. By industry, enterprise and economy he accumulated, for those days, a very handsome fortune. About the year 1818, still in the vigor of manhood, he removed with his family, consisting of a wife and three children, to Allegany county, settling near Angelica. He invested largely in wild lands: in the purchase of which, and obtaining title and possession thereof, he became the competitor and rival of others, who had and were making similar ventures. His activity and rare business qualifications, while they led to success, created bitter enemies.

As it was impossible for him to avoid frequent collisions, an open, uncompromising war soon ensued—a war in which Howe was so powerfully defiant that his enemies were compelled to combine against him, and a hostile and dangerous organization menaced him, moved

by every effort, however, unscrupulous and oppressive, which influence, ingenuity and hatred could devise.

In the purchase of land, and in other speculations, Howe extended his credit, if not beyond his means, quite beyond what prudence would have dictated, leaving little margin for sudden demands which the vicissitudes of business might make upon him. Through the machinations of his enemies, such demands became frequent and imperative. Taking advantage of any temporary inability to meet them promptly, vexatious and ruinous suits were brought against him. Actions of every kind multiplied. Often there would be several suits pending against him on the same day and in different and distant parts of the country: while on the calendar of the Supreme Court of Bath and Angelica, a lawsuit would be ready for trial. At the same time many of these cases were malicious and without merit, and Howe instituted actions against their prosecutors for bringing them. This only involved him deeper in a sea of litigation—precisely what his enemies desired.

Then, again, the machinery in his mill would be wantonly and secretly damaged, requiring several days, often weeks, to put it in repair. His horses and cattle were maimed and poisoned, and his farming utensils destroyed.

But, as we have said, against all this he made a manly and square fight; when it was against him, asking no quarter; when in his favor, giving none. Such was his indomitable energy; such his courage and sagacity; so strongly was he intrenched in the good will

of a large majority of the people, that for a long time, unequal as it was, the result was doubtful.

But the combination against him was too strong, too enduring. By degrees it began to tell on him; gradually he sank under the heavy, never-failing blows of his persecutors.

Judgments, which he was unable to satisfy, began to accumulate against him. His property was sold at ruinous prices to satisfy them. At last his own pleasant homestead, where all his hopes and affections were garnered, was swept away, and, with a breaking heart, he saw his wife and children, with streaming eyes, depart forever from that home where, for many years, they had dwelt in the sunshine of mutual love.

It was in the autumn of 1823, that Church, one of his most bitter and untiring enemies, accompanied by a constable, went to the residence of Howe, for the purpose of selling, on an execution, his household furniture. In those days the liberal and merciful exemptions, which now protect the poor man having a family to support, were unknown, and Church, the only bidder at the sale, became the owner of nearly every article of furniture and bedding that Howe possessed. He even went into the garden and sold the vegetables growing there.

With tears in her eyes, and with entreaties mingled with sobs, Mrs. Howe plead with the cruel creditor to spare their vegetables.

"These are all we have left," she said. "Winter is coming. Oh! leave these—not for me or my husband, but for my little ones, for oh! I cannot, cannot see

them suffer. Won't you spare them, sir? They are of little value to you. God will reward you if you will."

The only reply Church made to this touching appeal was pulling up an onion and throwing it at her, exclaiming, "There, take that, and feed your brats with it; when you peel it it will cause you to shed crocodile tears. But, by G—d, it's all you'll get out of this garden."

Howe was not present: but when his heart-broken wife related this unheard-of cruelty to him, his compressed lips, pallid brow, flashing eyes, "each feature working from his heart," revealed the agony, rage and hate which had taken possession of his whole being, and from that moment his thoughts became passionately fixed on one object, and that was revenge—to him a sacred call.

Silently, cautiously, adroitly, but surely, he "moved, like a ghost, to his design." His heavy blows fell as from the invisible hand of an avenging genii. In the silence and gloom of midnight he glided about like a grim specter, and when morning came the work of the avenger was seen. Sometimes the lurid glare of flaming buildings told that he had been at his direful work; but no clue, no circumstance, connected him with it, so deeply had he laid his plans of retribution. Several months went on, and Howe saw two of his enemies reduced to penury by heavy losses caused by unseen hands.

Only one of the persecutors was reserved for a dark and bloody doom. When the scene in the garden was related to Howe, the days of Church were numbered, and a bloody avenger hovered around his pathway. Rifle in hand, he watched his victim from thickets, as he passed. Twice the deadly weapon was brought to bear on his

person when riding at twilight along a forest-skirted road, toward his home. But, like Macbeth, Howe seemed "infirm of purpose," or, to use his own words, "Something seemed to say, Not yet, not yet."

Church lived at Friendship, ten or twelve miles west of Angelica, and Howe's residence was about half way between the two villages.

One day, as the latter was on his way to Angelica, he met Church in the road. They were both on horseback.

"Whose horse are you riding, Howe? I thought the sheriff had cleaned you out—everything you had? It can't be anybody would trust you an hour with a horse, so I guess you stole it. Why don't you ride out of the county and never come back, you mean devil?"

"You'll go out of the country before I do," said Howe, and he rode away muttering between his teeth, "his time has come, he will never see another sunrise." He went to Angelica, and remained there until late in the evening, conversing freely with his friends. About nine o'clock he mounted his horse and rode rapidly homeward. On his arrival there he took a loaded rifle from its place of concealment, re-mounted his horse and took the road to Friendship. Church resided in the eastern part of the village, and his was the first house that one passed on his way into the little town.

Leaving his horse several rods from the house, Howe stealthily approached it, and rapped at the door.

"Who's there?" asked Church.

"A friend," replied Howe, in an altered voice.

"What do you want?"

"I have a letter for you, which I am directed to give you personally," was the reply.

The unsuspecting man left his bed, and, without stopping to dress, went to the door, opened it, and the next moment he fell a bloody corpse to the floor. A rifle ball had pierced his heart. The deed was done, vengeance was satisfied. Mounting his horse, Howe fled homeward with the speed of the wind. But before reaching the road he heard the cry of the new-made widow, while shrieks of "murder!" rang out on the night air.

The road was darkened on each side by a deep forest. As he sped on, through the sighing and moaning of the winter winds, as they tore through the leafless branches that arched his way, "the beating of his heart cried to him—murder!" His mind was fixed, "in an agony of listening," on the dark woods around him, fearing that the ghost of his victim would spring before him from the thicket crying out for vengeance.

At last, recovering his self-possession, he grimly whispered to himself—"He deserved it; he deserved it; and if I die for what I've done, I shall die happy, because he deserved it. He made myself, my wife and my children beggars, and I've made him a corpse. Which is the worst? My fate, after all."

With such whispered thoughts as these he reached his home, put out his horse, put his rifle in its usual place, and went to bed, but not to sleep: for alas! he felt that he was a murderer!

In the meantime all was consternation and frantic grief at the home of Church. The report of the rifle, followed by the shrieks of agony and cries of "mur-

der," brought the neighbors to the scene. At their approach they found the door open, the body of the murdered man lying across the sill, with the blood flowing from a ghastly wound over his heart.

In a short time the whole village of Friendship was aroused. Howe was at once suspected. With the early dawn the sheriff was at his door armed with a warrant for his arrest. He maintained a sullen silence, simply saying, "I don't know why I am suspected." He refused to answer any questions, and quietly submitted himself to the custody of the officer, who conducted him to jail.

In due time he was indicted and brought to trial. That learned and eminent jurist, William B. Rochester, long a distinguished lawyer of the southern tier counties, residing at Bath, presided at the trial.

As has been said, John C. Spencer conducted the prosecution. The defense was committed to John A. Collier, a name illustrious in the legal and political history of the State, and to Fletcher M. Haight, a young but brilliant member of the bar, then a resident of Angelica.

The details of that extraordinary trial are too lengthy to be described here. Suffice it to say that Howe made a stubborn and powerful defense. There was nothing but circumstances for the prosecution to rely upon, so dexterously and swiftly had the murder been committed. Among these circumstances were the following: The ball which killed Church fitted the bore of Howe's rifle: the patch surrounding it compared exactly with those in his patch box. When found the next morning the rifle had apparently just been discharged.

Howe's horse the next morning was still wet with sweat, as though he had very recently been ridden with rapidity. It was also proven that the prisoner was a bitter enemy of the deceased, and had made threats that he would do him personal injury.

On the other hand it was shown that the fatal ball fitted several other rifles, and that the patch was the common linen generally used for such purposes; the sweat on the horse was accounted for by the fact that Howe rode home from Angelica late the night before. It was also proved that Church had bitter enemies other than Howe.

Mr. Collier brought to the discussion of these and other facts in the defense, all his learning, ingenuity and eloquence, while the impassioned but severe and chaste elocution of Haight, strongly aided his distinguished associate. With startling effect he descanted upon the danger of relying upon circumstantial evidence to convict persons charged with crime.

The effect which the arguments of these lawyers made upon the public mind has seldom been equaled. But the address of Mr. Spencer, as we have already said, overthrew, in the minds of the jurors, the hypothesis and argument of Collier and Haight. "He did not indulge in flights of fancy, in touches of pathos, or in bursts of eloquence; but he enchained attention by the facility with which he proved his positions and assertions; the sagacity with which he disentangled perplexed questions of facts, and reduced them to plain problems of common sense."

It was on this trial that he made his celebrated com-

parison touching the force of circumstantial evidence in criminal trials.

"Suppose, gentlemen," said he, "that you are on the shore of a large body of water, out in the depths of which is a vessel, floating without anchor, in danger of being carried away by winds or tide. You desire to bring her to shore, where you wish to secure her. You have no cable at hand with which you can do this, but you have a number of small cords. Not one of them, taken single, is strong enough to move her an inch. Now what would you do if determined to draw her to the shore? You would form those small ropes into one cable, strong enough to hold the vessel; attach it to her, then draw her to shore. Now this is precisely what I propose to do here. The people have a large number of cords or circumstances, no single one of which is strong enough to bring this guilty man to justice. I propose to take each one of them up, test it thoroughly, and if it bears the test, take another, test it, and if strong enough, place it with the first one, and to continue in this way until all are thoroughly examined and tried; then weave them into one cable, which I believe will be strong enough for my purpose. It is your duty, gentlemen, to apply your keenest scrutiny to the manner in which I discharge this painful and solemn duty, and if in the construction of my cable you detect a single weak or worthless strand, place your mark upon it, and when the time comes for you to examine the whole fabric, take out every worthless strand you find; but remember, the cable is for you—for this court, as well as for myself; but above all, it is for the great and sacred

cause of justice, which protects us all from the hand of the midnight assassin."

With almost blood-curdling imperturbability and fatal sagacity, he proceeded to the task of forming his dreadful cable, with such success that it drew David Howe to the gallows.

Several weeks before his execution Howe made a confession, in which the story of his wrongs, his ruin, the sufferings of himself, his wife and his children, was told with so much truth, touching simplicity and pathos, that it aroused in the hearts of the people of all classes emotions of sympathy seldom, if ever, extended to a man condemned to die on the scaffold. So strong and deep was the popular feeling in his favor that, is is said, had he appealed to the people to save him, he would have been borne in triumph from the hands of the sheriff.

Standing on the gallows he addressed the vast multitude assembled to witness his execution, in a speech. No one who heard it ever forgot it. It was pathetic, unadorned eloquence, breathing resignation to his fate, and submission to the majesty of the law, which he confessed he had broken. As he dwelt on some of the circumstances that brought him to his doom, there were few "whose eyes, albeit unused to the melting mood," were not bedewed with tears. Before concluding, he denounced one of the conspirators against him,—one who had followed him with vindictive designs down to his ruin, appearing as a chief and willing witness against him on his trial.

"Fellow citizens," said Howe, in a voice that for years rang in the ears of his auditors—"Fellow citizens,

standing on the brink of eternity, about to appear in the presence of the Great Judge of earth and heaven, I denounce him as a perjurer whom that Just Being will punish here and hereafter. The mark of Cain is upon him, there it will remain through all his days; curses will follow his footsteps: all who know him will look upon him as a God-condemned liar!"

These dreadful words found a shuddering response in the hearts of all who heard them, and they indeed placed the mark of Cain upon him against whom they were pronounced. Though he lived many years after, though he possessed wealth and a pleasing address, those followed him through life. He was always pointed out to strangers as the man whom David Howe, with his dying words, said was a perjurer. Those words were prophetic; for that man went through life sad, friendless, often deeply afflicted. Once he was arraigned at the bar of justice to answer for a fearful and disgusting crime, and was saved from conviction by a mere accidental turn in the trial, and by the ability of his counsel.

Such is the history of David D. Howe, a man

> Whose heart was form'd to softness—warped to wrong,
> Betray'd too early, and beguiled too long;
> Each feeling pure—as falls the dripping dew
> Within the grot; like that, it harden'd too;
> Less clear, perchance, its earthly trials passed,
> But sunk and chilled, and petrified at last.

AUTHOR OF "THE BURIAL AT SEA"—POET AND LAWYER.

Circumstances under which the Poem was Written—A Lawyer and Journalist of Other Days—Literary Galaxy, Bryant, Morris, Irving, Carter, Percival and Fay—The New York Mirror.

From his room to the deck they brought him
For his funeral rites, by his own request.
With his boots and stock and garments on,
And naught but the breathless spirit gone;
For he wished a child might come and lay
An unstartled hand upon his clay.
Then they wrapped his corse in the tarry sheet,
To the dead, as Araby's spices sweet,
And prepared him to seek the depths below,
Where waves never beat nor tempests blow.
No steeds with their waving plumes were here,
No sable hearse, no coffin'd bier,
To bear with parade and pomp away
The dead to sleep with his kindred clay.
But the little group—a silent few,
His companions mixed with the hardy crew,
Stood thoughtfully around until a prayer was said
O'er the corse of the deaf, unconscious dead.
Then they bore the remains to the vessel's side,
And committed them safe to the dark blue tide;
One sullen plunge, and the scene is o'er,
The sea rolled on as it rolled before.
In that classical sea, whose azure vies

With the green of its shores and the blue of its skies,
In some pearly cave, in some coral cell,
Oh! the dead shall sleep as sweetly—as well
As if shrined in the pomp of Parian tombs,
Where the East and the South breathe their richest perfumes.
Nor forgotten shall be the humblest one,
Though he sleep in the watery waste alone,
When the trump of the Angel sounds with dread
And the sea, like the earth, gives up its dead.

THIS little poem, which has received such unqualified admiration from the public, is from the pen of that finished scholar and elegant writer, the late Nathaniel H. Carter, who, to the soundest philosophy, the most varied knowledge, united a simplicity and amenity of disposition and manner, which gave great interest to his conversation, and imparted lustre to his character. He is remembered as the gifted and accomplished editor of the New York Statesman, a journal eminent for the ability with which it was conducted, and for its influence in belles lettres and politics.

Mr. Carter was an associate and friend of those illustrious artisans of our literature, Irving, Bryant, Morris, Fay, Paulding, Halleck, Willis and others, whose affluent minds, chaste and elegant productions, have elevated and enriched our national standard of letters, rendering the times in which they wrote an intellectual era never to be forgotten.

The Burial at Sea was the last production of Mr. Carter's pen. It is pervaded with a strain of tender feeling and exalted resignation, poured out with such abundance as to steal on the heart of the reader,

gradually overflowing it with sympathetic emotions. It is his burial dirge, prepared by his own hand, at a time when, as he believed, he was soon to sleep beneath the waves of the Mediterranean. These circumstances alone give it peculiar interest. It was written in the autumn of 1829, while its author was on a voyage to Marseilles, with the hope of obtaining some relief from the ravages of consumption in the soft and balmy atmosphere of Southern France. A few days before reaching the entrance of the Mediterranean, his disease assumed such dangerous symptoms that his hour of departure from earth seemed at hand, and that the deep would be his burial place; but he lingered a week after landing at Marseilles, and then breathed his last. His funeral was attended by all the strangers at Marseilles, and most of the native literati, for he was well known by reputation to the citizens of that enlightened and hospitable city. Mr. Carter was forty-two years of age.

His last poem was found among his papers after his death. Mr. Fitch, a highly respectable American, then residing at Marseilles, sent it to the editor of the New York Mirror, and it was first published in the columns of that elegant and ably-conducted journal. In the language of George P. Morris, then one of its editors: "Mr. Carter should be remembered, for he has extended our literature, added a stock to our national amusement and instruction. His writings have been preserved with care, and are more numerous than even his most intimate friends supposed. In some of his less labored efforts there is more of the gentle harmony and lovely imagery of Goldsmith than in his more elaborate productions."

A minute inspection of them, however, reveals faults; but there are in them few sacrifices of good taste made for the preservation of symmetry and regularity; there are no glittering morsels inserted extraneous to the substance and the meaning; no attempt to please the eye by smoothness and equality of surface. In his poetical effusions, there is a mildly-tempered yet lively fervor. One of his happiest poetical productions is his poem entitled "Pains of Imagination," delivered at Dartmouth College in July, 1824, before the Phi Beta Kappa. So successful was this production that it is considered by judicious critics as equal in power, beauty and compass of thought to Akenside's Pleasures of Imagination. But it must not be supposed that Carter's talents were limited to poetry. His letters from Europe, his political and literary essays, his reviews, critiques and leading editorials reveal the opulence and power of his mind, his research and learning; they are characterized by the same undefined delicacy of expression which enrich his poetry. Amid the bitter political contests engendered by the collision of the friends and enemies of Mr. Clinton, the latter found in the pen of Carter a powerful support. It was, however, stronger in defense than in the attack, which detracted something from its political influence; thought and action which he always asserted enabled him to resist the temptation—the contagion of politics which so often infects the judgment and candor of the noblest minds. "If he had faults, and many of them, it will be fortunate indeed for those of us who may be charged with less." But let us turn a moment to the early life of this eminent, though unpretending, man.

He was born at Concord, New Hampshire, September 17, 1789. He was the son of a respectable citizen of that town, who never dreamed that his boy had any distinguishing marks of talents about him, until he was noticed by a committee who visited the small school in which he was a student. Soon after this he was sent to Exeter Academy, one of the best literary and scientific institutions for elementary knowledge which has ever been established in New England, which contains the best that can be found anywhere. He soon became a favorite with Doctor Abbott, the principal of that institution, who occupied that situation for forty years, and who was the schoolmaster of Cass, Webster, Saltonstall, Carter and hundreds of others, not unknown to fame.

From this institution Mr. Carter entered Dartmouth College, and was at once ranked among the first of his class, which rank he never lost while a student. He never neglected a lesson in any branch of study, but found time to devote many hours to writing, and was at that early period considered a writer of uncommon promise. After graduating, he took charge of an academy at Portland, Maine. In that pleasant and tasteful town, he met with congenial spirits—men of talents, of acquirements and social habits—among whom were Freeman, Sewell, Storer, Willis and Wright. He remained at Portland until 1817, when the charter of Dartmouth College was modified, and the institution made a University, when Carter was appointed a professor of languages in the new University, in which capacity he served with great credit to himself and profit to the students, until the Supreme Court of the

United States decided that the act creating the University was unconstitutional.

The old college had not ceased to exist, and it refused to surrender the libraries and other property in its possession to the University. In the trying times of crimination and recrimination which resulted from this state of affairs, Carter was always popular, for he offended no one, and took every opportunity to conciliate the asperity of parties. At length, wearied with the discords at Dartmouth, he left that institution and visited New York city, with letters of introduction to Josiah Ogden Hoffman, then one of the most distinguished lawyers and legislators of the State of New York. He was invited by Mr. Hoffman to enter his office as a student at law. The invitation was accepted, and Mr. Carter remained with his eminent friend until his admission to the bar. While a student with Mr. Hoffman, Carter distinguished himself by his various contributions to the press of the city, and especially in his ably-written productions in defense of DeWitt Clinton, who held Mr. Carter in high esteem, and who, to use the language of a writer of that period, "treated him with the utmost consideration and respect—treated him as one of those who are made for something better than the wear and tear of a politician."

Soon after his admission to the bar, Carter was invited by the late Charles G. Andrews, who was then connected with the Albany Register, a paper devoted to the Clintonian party, to assume the editorial control of that journal. After some hesitation, the invitation was accepted, and the Register passed under the control of Carter. He continued to discharge his editorial duties

at Albany until March, 1819, when, through his influence, the New York Columbian and the New York Statesman were united under the name of the latter, when he associated himself with George Prentice, a practical and experienced printer, and father of the late George D. Prentice, the distinguished editor of the Louisville Journal—Mr. Carter assuming the editorial charge of the paper, which became, as has already been said, one of the leading journals of the time.

While at Albany, Carter became an intimate friend of the late Colonel William L. Stone, distinguished as the author of the "Life of Brandt," a work which gave its author a high reputation as a writer. While Carter was conducting the Statesman, Colonel Stone, who was then a resident of New York city, and himself were engaged in various literary and scientific matters. During the Constitutional Convention of 1821, they reported the debate and proceedings of that body, and subsequently, with Mr. Clark, published a volume of these debates, which is now to be found in the library of most of the lawyers of the State. The book does its authors great credit, and it met the hearty approval of the members of the Convention.

In the year 1825, Carter accompanied a son of the late Henry Eckford, Esq., on a European tour. It was while on this tour that he wrote his work extensively known as "Carter's Letters from Europe." To use the language of the New York Mirror, in speaking of them: "They are written in an easy, flowing style and with such religious exactness as he saw things, that they were very popular, and were copied into the periodicals in every part of the United States. They are

amusing and instructive—sometimes, perhaps, too minute; and in them, too, many things are explained which might be presumed to be understood; but, as a whole, there is hardly a volume of travels extant among us that contains so much information, in so gentlemanly a manner, as this work of Mr. Carter. The reader rises from a perusal of it enlightened as to facts, and refined by a pure current of virtuous feelings which runs through the work, it might be said a religious feeling, for he viewed things as a Christian." In the letters written by Mr. Carter from Greece, there is a singular interest and beauty, especially to the scholar and lover of history. Every object in that classic land, described by him, receives new embellishment from his pen. In speaking of the poets and the sculptors of the Greeks, he says: "It is exactly the same power of mind displayed in their poetry as in their statues. Both are exquisite imitations of nature; the one in marble, the other in words; for it is evident that the Greek poets have the same perfect idea of the subject they described as their sculptors have of the objects they represented; and really, the true way to understand the plays of Sophocles and Æschylus is to study them before the groups of Niobe or the Laocoon."

Mr. Carter returned to his native country in the summer of 1827, and resumed his editorial duties, in the midst of which he found time to revise his letters, and prepare them for republication. At length he gave them to the public in two handsome octavo volumes. They were extensively sold and circulated, and are still regarded with great favor by the public. "His health, or a long time precarious, had now become quite fee-

ble ; and he was impressed with the certainty of speedy dissolution. To avoid the suffering he knew he must experience by a winter residence in New York, he visited Cuba in the autumn of 1825. From this island, he contributed to several magazines of the day, but did not enter upon any extended literary work. He returned in the spring of 1828 with the intention of resuming his editorial labors, but he soon found that he had not sufficient strength for this, and amused himself by taking a journey to his home at Concord, where he was received with every mark of attention and respect by the judiciary, the bar and the citizens generally. It was while on this visit that he wrote that much-admired poem entitled "My Native Stream." It was written under a strong conviction that this was his last visit to the home of his youth, and is imbued with that tender, yet pleasing, melancholy so natural to his sensitive mind. He returned to New York, disposed of his interest in the Statesman, and remained in that city, too ill to engage either in the duties of his profession or in any literary pursuit, until the autumn of 1829, when he sailed for Marseilles, never to return. He was forty-two years of age at the time of his death.

"Mr. Carter, though a profound scholar and an elegant writer," said a distinguished statesman, "was too sensitive for a politician. He loved his friends too ardently, and was too just to lash his enemies with sufficient severity to please the public as a party writer, for the feuds of political contests allow no gentle feelings—admit no tears but those of iron, such as Pluto shed when he feared that power was passing from him."

Mr. Carter was a member of the New York city Bar.

He studied his profession under the instruction of that great and accomplished lawyer, Josiah Ogden Hoffman. But the elegant and finished productions of his pen called him away from his chosen profession to fields of literature and the great duties of a journalist. He always, however, retained great admiration for his profession. He began a work entitled "Review of the Law of Libel and Slander," but, his health failing, he was compelled, with great reluctance, to give up the work. His manuscript was, however, taken by another legal writer, and made the foundation of a standard work under the same title.

It was his intention to devote himself to the practice of the law; and, had he lived, his name would now be found among the eminent lawyers of the past.

The writer has experienced some pleasure in his attempt to preserve the memory of a venerated kinsman, and one who was regarded, not only as a man of learning and intellect, but as a man of magnanimity and Christian virtue, who believed that knowledge and intellectual powers were imparted to him, not simply to amuse men or to build up a reputation, but that he might quicken and call forth what is elevated and divine in his fellow-man, and thus to secure the only true fame, the admiration of minds, which his writings kindled and exalted.

BULLDOZING WITNESSES.

A Cross-examination *Ad Nauseam Usque*—Fate of the Bulldozer —Amusing Description of a Trial.

A SUCCESSFUL cross-examination is one of the most difficult and important duties which an advocate can perform ; it requires a knowledge of human nature—of the springs of human nature—a nice and subtle discrimination. It is "the thumbscrew of the law." It proceeds on the assumption "that the party cross-examined has sworn to an untruth which he may be compelled to vary." But it is often the means by which trustworthy evidence is mischievously weakened or set entirely aside. All persons who attend courts of justice frequently observe instances where valuable and truthful evidence has been neutralized or destroyed under a vigorous, unscrupulous cross-examination.

A few weeks ago, while attending a circuit in one of the western counties of the State, we witnessed a striking instance of the baleful effects of this kind of cross-examination. A respectable, conscientious, timid and nervous man was called as a witness in an important case then on trial. He gave his evidence in a straightforward, candid, convincing manner, and it was very damaging to the plaintiff's case. The counsel for the plaintiff was a man in every sense of the word qualified to conduct a cross-examination *ad nauseam usque.*

Bold, brassy, conceited, impudent and subtle, few men had nerves sufficiently strong to withstand his continuous, artful and rapid fire of interrogations. He saw the necessity of destroying the evidence of the witness —saw, also, that he was made of the right material to be bulldozed, perplexed, and his statements rendered doubtful under a thorough and searching cross-examination, such as the counsel felt conscious he was able to conduct. It was curious to observe the struggles of the witness to escape the snares which his powerful and wily interrogator laid for him; but it was like a bird fast becoming entangled in the snare of the fowler, rendering itself more and more powerless with each effort to escape. It was in vain that the opposing counsel, with every subterfuge known to the skillful legal tactician, attempted to rescue his witness from the toils of his opponent; all truthful as was the statement of the man, it was doomed to be made equivocal, uncertain, apparently contradictory and worthless, and injustice triumphed over a meritorious cause of action. As has well been said, results like this arise from fallacies, or lapses of memory, undue excitement, seeing without observing, knowing a part and imagining the whole, religious prejudices, political hatred and divergence from literal truth. Then come timidity, fear that the exact truth will not be told, and frequently conceited ignorance attempting to display an impossible superiority.

The incident we have just described reminds us of a cross-examination that took place on the trial of a man charged with assault and battery, at Albany, several years ago. A witness for the people, by the name of Utter, had testified, on his direct examination, that he saw the

prisoner strike the prosecutor a heavy blow. Utter was a respectable, candid man, desirous of telling the facts within his knowledge just as they were. This he did to the satisfaction of judge, jury and spectators.

The counsel for the defense, after running his right hand through his hair, and giving the man a terrible look, as much as to say, "Now, sir! your time has come! You have lied from the beginning to the end of your statement, and I'm going to show you up," commenced as follows:

"Witness, you have testified that you saw my client attack Mr. Sabin, the prosecutor?"

"Yes, sir; I did so swear."

"Oh, you did, did you? The court will observe that this man belongs to one of two classes of witnesses, and legal gentlemen especially dislike a very willing or a very unwilling witness. Now, witness, hold up your head, and don't look so guilty! If you mean to tell the truth, and not a falsehood, look me full in the face, sir!"

"I expect to tell the truth; that's my desire, and I have told the truth."

"Oh, yes; no doubt you wanted to; but you have been tampered with. Never mind," continued the lawyer, winking at the jury; "I'll try and get the truth out of you, despite your cunning prevarication. Well, sir, now let me ask you, in the first place, did you have a square look at this affair? Did you have an unclouded view? Were your optics undimmed? Were your eyes all right when you saw my client, previous to resorting to corporal extremities, attempt to coerce and

preponderate upon the excited fears of the prosecutor in this case ?"

"Sir, I do not quite understand you."

"You did understand me, sir. Don't say you didn't. I ask you again, did you see any attempt to aggravate the fears and enhance the apprehensions of my client ?"

"I don't know ; I may, perhaps, not quite under— what was you saying ?"

"Put your question in a plainer form, Mr. ———," said the judge.

"If your honor please, I asked the witness as to his personal evidence in this case, whether he himself saw the offense committed—I mean, of course, the alleged offense. I shall now put him a plain, direct and unavoidable question. I now ask you, witness, did you have an unclouded view—were your optics undimmed—when you saw this person, this individual, this prisoner at the bar, raise his muscular arm and attempt to coerce and preponderate upon the already sufficiently excited fear of my client ?"

"Sir—preponderate ? Pre—I don't exactly—that is—I—I—don't quite understand you."

"Yes you do, sir ! You can't get off in that way, sir," said the lawyer. "The Court will observe," he continued, "that the witness desires to prevaricate. He delays an answer to my interrogation, which, as your honor must have seen, is a very simple one, in order to make up a reply that will hold water. Now, witness, I ask you—look me in the face, sir—did you see this person, this man, this prisoner at the bar, did you see him raise, as I have said, his muscular and outstretched

arm and do the deed, the exaggerated deed, you have sworn to ?"

"I am afraid I don't quite understand you ; what was you saying ?"

The counsel now turned to the Court, in apparent astonishment, saying: "Your honor, the witness don't understand me !"

"I don't think he does understand you. If he does, he is the only person in the court-room that understands you. Be more plain and direct with your questions. Use less circumlocution, and you will have no difficulty," said the judge.

"What does your honor mean ?"

"I mean, sir, that you cover a great deal of bread with a very little butter. Ask the witness if he saw a blow given, and by whom," said the judge.

"Well, witness, did you see my client, the prisoner here, strike the prosecutor ?"

"I did ; and he knocked him down."

"Now, sir," thundered the lawyer, "why did you not say so before ?"

"'Cause you didn't ask me."

Thus ended the cross-examination and the defense. The prisoner was convicted.

Some years ago, a gentleman of high standing, who had been a witness in an important trial, in writing a description of the case, said :

"Of all unfortunate people in the world, none are more entitled to sympathy than those who are compelled to appear as witnesses in a court of justice. You are required to place your hand upon the Bible with a cross on one side and none on the other. You are then ar-

raigned before two legal gentlemen, one of whom smiles at you blandly, because you are on his side, while the other eyes you savagely, for the opposite reason. The smiling gentleman proceeds to pump you of all you know, and, having squeezed all he wants out of you, hands you over to the scowling gentleman, who proceeds to show you that you are entirely mistaken in all you have sworn to; that it was impossible for you to know any thing about the facts you have sworn to; that you never saw the defendant in your life; in short, that you committed flat perjury. He wants to know if you have ever been in State prison, and takes your denial with the air of a man who thinks you ought to have been there, and then tells you, with an awe-inspiring severity, to remember that you are under oath, and to be very careful what you say. He wants to know if he understood you to say so and so; and then wants to know if you meant something else; if you didn't say something else; if you hadn't been impeached several times in your life. When you say you have not, then he looks fiercely at you, as much as to say you ought to have been impeached.

"Having bullied and scared you out of your wits, and convicted you, in the eyes of the jury, of falsehoods, he lets you go. By-and-by, every flunkey who happens to dislike you, and every person with whom you have had any misunderstanding, is put on the stand to swear that you are a big scoundrel, and not to be believed under oath. Then the opposing lawyer gets up, turns around and points his finger at you, and proceeds to paint your moral photograph to the jury, and presents you as a character fit to be handed down to time as a

type of infamy; as a man who had conspired against innocence, virtue, truth, decency, and that you justly stand convicted of all these things before the jury. The judge, in his charge, tells the jury that, if they believe your testimony, etc., etc., indicating that there is a judicial doubt of your veracity; and you go home to your wife and family, neighbors and acquaintances, a suspected man, all because you were compelled to be a witness against somebody."

A DRAMATIC SCENE IN THE UNITED STATES SUPREME COURT.

Trial of Aaron Burr—Great Stroke of Policy on the Part of Burr—The Subpœna *Duces Tecum* for President Thomas Jefferson—Singular Attack on Him—Its Result—Burr's Triumph—His Boldness and Eloquence—Opinion of Chief-Justice Marshall.

CHIEF JUSTICE MARSHALL occupied the bench of the Supreme Court of the United States thirty-four years and upwards. In addition to the very large number of important cases decided by him during his long judicial career, there is a class of cases that will never be forgotten by the American people. They are those cases that involved elaborate discussions of constitutional law of such magnitude that they attracted attention, not only in his own country, but in England and in Continental Europe. Six years after he was appointed Chief Justice of the United States, he was called upon to preside at one of the most extraordinary and important trials on record—the trial of Aaron Burr for high treason. If all his other judicial services were forgotten, the manner in which he discharged his duties on that trial would alone give immortality to his name.

This took place at Richmond, Virginia, in June, 1807. Thomas Jefferson, then President of the United States, anxiously desired the conviction of Burr. The

hatred with which these men regarded each other was embittered by political antagonism, and, on the part of Jefferson, intensified by a firm belief in the guilt of Burr. The trial continued for many months, calling to the forum the ablest legal talents of the nation. The numerous opinions and decisions pronounced by Marshall during its progress, are still regarded as living, vital principles of law. The learned and elaborate arguments of the counsel engaged have left an indelible impression on our legal system, and are still read as beautiful contributions to legal literature and legal logic.

It is not our intention to enter upon a full description of this great legal battle; we shall only relate an incident in it that will give the reader an idea of the manner, personal appearance and judicial character of Chief Justice Marshall, portraying, in the meantime, the versatile strength and resources of Burr as a lawyer. In doing this, we shall briefly allude to the counsel engaged.

George Hary, the United States District Attorney of Virginia, and acting Attorney-General, conducted the prosecution. He was assisted by William Wirt and Alexander MacRea. The former was then a brilliant luminary, just rising over the legal world. He entered the contest at the earnest request of Jefferson himself. The various arguments made by him in the course of the trial were distinguished by profound and industrious research, ingenious and skillful arrangement, embellished by a refined and brilliant imagination. His speech containing that famous interrogatory, "Who is Blennerhassett?" is ranked with the classics, and has

been declaimed by schoolboy orators, before admiring friends, for generations; and will be mouthed on academic rostrums for generations to come. Mr. MacRae was then Lieutenant-Governor of Virginia, an able lawyer, and one of the most sarcastic and bitter men of his time. He regarded Burr as the cold-blooded murderer of Hamilton, guilty of the crime of high treason, and meriting death. Edmund Randolph, Luther Martin, John Wickham and Benjamin Botts, father of John Miner Botts, assisted Burr. All the counsel engaged in the case had a national reputation. Of those engaged in the defense, Luther Martin and Mr. Wickham were the most distinguished. The latter, like Wirt, possessed a swift, incisive insight and utterance, an elegant diction—a wit as flashing and clear as it was sharp and penetrating. Luther Martin was the most peculiar man engaged in the trial, and most dreaded of all Burr's defenders. He was a federalist of the deepest dye. He entered the contest incited by a malignant hatred of Jefferson, and brought to it great legal talents. Reason fell coldly, but effectually, from his lips, occasionally relieved by impressive appeals and spirited eloquence. His almost fierce and destructive cross-examinations were a terror to his opponents, while his sarcasm and invective scorched, tortured and excoriated. He belonged to the Maryland Bar, and resided at Baltimore. All other lawyers engaged in the trial were Virginians.

But, amid the brilliant array of defenders and opponents, Aaron Burr stood pre-eminent, the acknowledged leader of his own defense. He had subjected the case to an exhaustive analysis, had developed precisely what the prosecution was compelled to establish, in order to

convict him, and had discovered the points where it was weak and where vulnerable to an attack. Perfectly familiar with every rule of evidence—cool, wary, self-possessed, he joined these resources to a matchless generalship in the judicious selection of position, in well-conceived and adroit plans of attack, in scanning the entire line of his antagonist's array, and in selecting the point of assault.

One strong, all-absorbing desire pervaded his whole being, and stimulated his every action—that was, to strike at the powerful man whom he believed was seeking his life from political motives. His desire to do this was often gratified, for occasions frequently occurred during the trial that enabled him to attack his apparently invulnerable enemy so successfully that his blows were keenly felt.

As the trial went on, Burr planned an attack, so bold, so startling, that it electrified the public. After he had fully matured his plan, he revealed it to his counsel in a consultation that took place after court adjourned for the day, on the 8th of June, 1807. They were astounded at the proposed movement. Even Luther Martin, who feared nothing, and who never hesitated to strike when Jefferson was the subject, recoiled before the bold plan of his leader. But Burr was firm, inflexible and sanguine, and, after long deliberation, his associates agreed to aid in the assault.

Burr had, by accident, discovered that certain documents and correspondence, of which Jefferson, by law, was the legal custodian, could be made useful to him in his defense. In pursuance of this object he had caused these papers to be demanded of the President ; the de-

mand was of course refused, and now he proposed to move the court for a writ of *subpœna duces tecum*, commanding Jefferson himself to appear in court with the documents in his keeping.

"Colonel Burr," said Wickham, after listening with astonishment to this astounding proposal; "Colonel Burr, are you really serious in this? Do you really propose to make an attempt to bring the President of the United States from Washington to Richmond as a common witness?"

"Certainly I do; why not, Mr. Wickham?" was the cool reply.

"Will Marshall have the nerve to grant the writ, even if you are entitled to it?" asked Martin.

"Do you not think I am entitled to it? is it not a writ of right? and does such a writ know any distinction in person?" asked Burr. There was no answer to this question. After a few moments' silence Randolph said:

"Perhaps at this stage of the trial the Chief Justice will not——"

"If John Marshall," said Burr, interrupting him, "comes to the conclusion that I am entitled to the evidence which is locked in the archives at Washington, and which Jefferson cannot let go out of his possession, he will compel him to produce that evidence here. Marshall will not allow even the President of the United States to interfere with him in the discharge of his duty. But the question is a great and a grave one. Study it, gentlemen. It will test the strength and extent of the two great powers of the government, the executive and the judicial."

"Who will make the motion?" asked Randolph.

"I will," said Burr, "and close it, too, if you desire me to do so. But, gentlemen, I shall expect your support. We shall have the whole force of the prosecution against us. Hay will furnish the thunder, Wirt the lightning, and MacRae the hurricane and the hail. So we shall have our hands full."

"Speaking for myself and my associates, which I venture to do," said Martin, "you shall have our entire support. But when do you propose to make the motion?"

"To-morrow morning, at the opening of court. I will prepare the proper affidavits before I sleep. You have time this evening and in the morning to prepare yourselves," said Burr, and the interview ended. The lawyers retired to their hotel, their client to his prison.

The night that followed was a sleepless one for Aaron Burr. His elegantly-furnished rooms in Richmond were amply supplied with law books, over whose pages he lingered until long after the state-house clock tolled the hour of midnight. "The fires that burned in the tough fabric of his physical and intellectual constitution" were as undimmed when the last page was turned, the last note made, as when he entered on his labor. Taking pen and paper, he addressed himself to the task of preparing the necessary affidavits. It was not until long after four o'clock in the morning that they were completed, and then this man of iron threw himself on his bed without undressing, and sought a short repose.

On the morning of the 9th of June, 1807, Colonel Burr entered the court-room with a quick, nervous step. A splendid suit of black set off his small but well-formed

person ; his hair was elaborately powdered, and he wore the queue so fashionable at that day. There was something peculiar in his manner—an unusual vivacity in his eye as he saluted his own and opposing counsel. In short, he appeared like a man about to enter upon some momentous undertaking, conscious of his ability and confident of success. From the opening of the trial to the present moment, his undaunted self-possession and dignified calmness inspired even those who believed him guilty with an involuntary, irresistible respect, which moral firmness always produces on the mind, forcing an unwilling interest in his fate—even a half indulged hope that he would escape. The counsel on both sides had been in their places some time, surrounded by a gifted and distinguished bar, and a vast audience. The galleries were thronged with a brilliant assemblage of ladies, who, it is needless to add, strongly sympathized with the distinguished prisoner.

Chief Justice Marshall and Associate Justice Cyrus Griffin were on the bench. The former was then fifty-two years of age, two years the senior of Burr. He was tall, somewhat slender, but well formed. Thought and mental labor had deeply written their traces on a physique striking beyond comparison. His forehead was high and majestic, his eyes almost as brilliant and as flashing as Burr's. Gray hairs were here and there scattered among his dark locks, showing that "time had slightly set its signet seal upon him." Finally, he was personally as well as mentally formed to grace the bench.

"Burr's spirits are unusually animated this morning. He must have dreamed last night of conquered provinces in the southwest, fancying himself their Emperor,"

said MacRae to the Attorney-General, as Burr took his seat.

"Perhaps so; but I think he is still rejoicing over the decision which Marshall gave in his favor yesterday. He should rejoice, for it gave him a great advantage," was the reply.

"I think," said MacRae, "that he has been planning some new scheme to elude your grasp. The guilty wretch, how full of resources he is; but I think Wilkinson's testimony will nail him."

The day before the court sustained an objection made by Burr to receiving evidence of treasonable intention, until the prosecution first proved the commission of an overt act of treason by the prisoner. This was the decision to which the Attorney-General referred in his reply to Mr. MacRae.

"Gentlemen, proceed; the court has waited for you some time, Colonel Burr, said the Chief Justice.

"If your Honors please," said Burr, rising in his place, "before entering on the usual business of the day, permit me to say that we are aware of the existence of certain documentary evidence of vital importance to the defense, that is now in Washington, the legal custodian of which is Thomas Jefferson, President of the United States; and upon affidavits which I hold in my hand, I ask your Honors to grant me the usual writ of *subpœna duces tecum*, commanding him to produce those documents here in court, and to give testimony relative to them."

He then proceeded to read the affidavits. Had a thunderbolt come crashing through the walls of the room it could not have been more startling than was

this motion of Colonel Burr, to the Attorney-General, his associates, and the audience. The former was aware of the existence of the papers, but believed that Burr had no knowledge of them. They knew that the motion was made in part to harass and perplex Mr. Jefferson, and they had contested it with singular determination and zeal. After reading his affidavits, Mr. Burr opened the argument. It was characterized by philosophic method, an artist-like completeness—it was reason, thought and logic, condensed to a bright focal point, "his manner was dignity itself, composed, courteous, confident and impressive."

He was followed by Luther Martin. In the course of an exhaustive and profound argument he made a bitter and scathing attack on Jefferson.

"This President of the United States," said he, "has let slip the dogs of war—the hell-hounds of prosecution—to hunt down Aaron Burr, and should he, who has raised all this absurd clamor, pretend to keep back papers so vitally necessary to this defense, where life is at stake? It is a sacred principle that in all such cases the accused has a right to all and any legal evidence which is necessary for his defense, and whoever withholds, willfully, information that would save the life of a person, on trial for a capital offense, is substantially a murderer, and will be so recorded in the register of heaven."

The reply of Mr. Wirt to this extraordinary speech was an effort which no man but he could make. His powerful method of yielding logic, his great legal learning, his pleasing, practical language, and his graceful manner enchained attention. From the severest reason-

ing he passed with facility to impassioned eloquence —to deep denunciation and sarcasm.

Burr himself made the closing argument. It contrasted singularly with the exhaustive argument of Wirt. It was unembellished, marked by profound, industrious research, ingenious and skillful in arrangement, precision and force. His discussion displayed that insight into the spirit and intent of the law of treasonable acts—the distinction between treasonable intent and overt acts, showing what proof he was entitled to give in explanation of the circumstances relied upon by the prosecution, and that the evidence he needed for this explanation was in the hands of Thomas Jefferson. The latter had openly stated, doubtless with truth, that there was not the least doubt of Burr's guilt. This was seized upon not only by Martin, but by Burr with great effect, at least so far as the audience was concerned, proving that the animus of the President against him was so great that "he had even assumed the prerogative of a judge deciding the case in advance adverse to him." Burr closed his argument with a short but sarcastic consideration of Wirt's argument. Never was there a more bitter, withering review couched in so few words. It was the application of caustic to a fair and beautiful surface, transforming it into hideous deformity.

After due deliberation the Chief Justice announced an elaborate opinion, in which he fully sustained Burr's application for the writ.

"The court said he could perceive no legal objection to issuing a *subpœna duces tecum* to any person whatever, provided the case be such as to justify process. The

law is no respecter of persons. Every individual, no matter how high or how low his condition, must give all facts in evidence that may be required in a court of justice. As we see nothing in the publication of the documents that the law may reasonably demand of him. To curtail the courts in their power to compel evidence, would be subversive of the ends of justice. As we see nothing in the publication of the documents required here that would endanger the public safety, and as it appears that they may materially aid the defense, the writ must be granted."

The Chief Justice, in his opinion, decided that the bodily presence of the President as a witness might be compelled by a writ. Nothing could exceed the disgust of Jefferson at the result of this motion. In a letter dated June 17th, 1807, to the Attorney-General, he refused to attend the court, urging the important duties of his station as a reason.

"If," said he, "I obey this writ, I may be compelled to go to Mississippi or St. Louis, or to any distant part of the nation, and thus it would be left without an executive; the place for the President is at the seat of government."

But Burr gained his point. Perhaps nothing tended more directly to his acquittal than the position in which he placed Jefferson by the favorable termination of this famous motion.

IRISH LAWYERS.

Recollections of William Sampson, Author of "The Irish Emigrant."—His Amusing Defense of Dr. Little.—A Distinguished Physician with a Sable Wife.

In the spring of 1805 several eminent Irish lawyers who had been banished for devotion to the liberty of their country, became residents of the city of New York. As they were men of scholarly endowments, intimately acquainted with the beauties and subtleties of the law—as they united the poetic vehemence of Irish eloquence with the grace and strength of American logic—it is not strange that some of them became illustrious, and all of them distinguished members of the American bar.

Among these was the celebrated William Sampson, who stood next to Curran, Grattan, and Bushe at the Irish bar. He came to America at a fortunate era. Alexander Hamilton had recently fallen in a fatal duel. Aaron Burr, next to Hamilton the most conspicuous lawyer of his time, had been ostracised by an indignant public for killing his great legal and political rival in the duel. Brockholst Livingston, James Kent, Ambrose Spencer—great lights of the forum—had been elevated to the bench.

Thomas Addis Emmet, another great Irish lawyer, had taken Hamilton's place as a lawyer, and in a short time after his admission to the bar of the State of New York, Sampson stood next to Emmet in forensic fame.

As was said of Bushe, Sampson could state clearly, reason calmly, argue logically, and when transported by the vehemence of his feelings and roused by his subject, splendid imagery was at his command, and he could soar above all other speakers. Like Bushe, he was a wit as well as an orator, but his wit, like his eloquence, seemed to flow from him without an effort. He knew precisely when, where and how to use his wit. "At times he squandered it with the profusion of Rabelais, then his words were merry and then mournful as his country's music." At the bar he was so lost in his cause, he could think of nothing else; in private life the most social, exquisite, enchanting companion.

While he was in the zenith of his professional career, two eminent opposing politicians quarreled; some of their friends proposed a settlement between them by the code of honor, but, as they were very careful of their persons, having an especial hatred of "villainous saltpetre," they declined the duel—one on the ground that his conscience would not permit him to break the commandment "thou shalt not kill"—the other on the ground that his attachment to the church to which he belonged, and his devotion to his family were total interdicts to using the pistol. Sampson, hearing of this, sent them the following witty verse, which Bushe wrote on a similar occasion, when two political Irish agitators had quarreled, and who declined the duel—one on account of his wife—the other on account of his daughter.

"Two heroes of Erin abhorent of slaughter,
Improved on the Hebrew command;
One honored his wife—the other his daughter,
That their days might be long in the land."

One of Mr. Sampson's most intimate friends in Ireland was the celebrated Peter Burrows, sometimes called the Goldsmith of the bar. One of his most eloquent efforts while in parliament—Sampson used to say—was his defense of the illustrious Grattan when attacked by Lord Castlereagh. "I know the man," said Burrows, "the theme of universal panegyric, the wonder and boast of Ireland, for his genius and virtue. His name silenced the sceptic upon the reality of genuine patriotism. To doubt the purity of his motives was a heresy which no tongue dare utter. Envy is lost in admiration and even those whose crimes he scourged blended extorted praise with the murmurs of resentment."

Sampson used to give the following description of Burrow's person :

"His figure was very clumsy and he moved with ungraceful gesture. There was no elegance in his exterior, it was all inside. His features were short, but pleasing. His voice was the worst, and seemed to come *ab imo pectore*—from the bottom of his throat. It was not unlike the puff of an asthmatic bellows, but his heart was in his words and it was impossible to listen to his earnest and impressive pleading without responding to the conviction of the inspired speaker."

"Burrows," says Sampson, "was one of the most absent-minded men I ever knew." Commissioner Parsons was one of his most intimate friends, and was always in want of money. He once wrote Burrows a note requesting the loan of twenty pounds, receiving the following reply :

"DEAR PARSONS: Your note received. I enclose you all the money in my possession—a ten-pound note—wish it was more.

"Yours truly, P. BURROWS."

Now, instead of enclosing a note for ten pounds it was a note for fifty, and its receipt was thus acknowledged:

"MY DEAR PETER: I am greatly obliged to you, and when I get able will pay you the fifty pounds. You can afford to wait.

"Yours ever, J. PARSONS."

Then came the following reply:

"DEAR PARSONS: It was thirty pounds instead of fifteen, was it? I am glad your memory is good, and that you are so honest, or I might have lost fifteen pounds. All right; you will pay when you get able, will you? This reminds me of eternity—or a small edition thereof; nevertheless shall always be happy to oblige you. I mean just what I say. When you want money call on me, for I know you'll keep a true account.

"Yours with esteem, P. BURROWS."

Sampson's celebrated defense of Doctor William Little, indicted for an outrageous assault on his wife, was a remarkable effort, in which learning, wit, ridicule and assurance were strangely blended. After his indictment the doctor was committed to jail to await the day of his trial. While there he wrote his wife a cold, unrelenting letter, in which he meant it to be understood that

he was done with her forever. It contained no regrets for his cruelty. Instead of showing any sorrow for what he had done, he was obdurate and heartless. But Sampson adroitly turned the letter to an admirable though peculiar defense. So ingeniously did he construe its meaning that the doctor, his wife and the jury were made to believe that it was the offspring of repentance—of deep affection, of sympathy, and that it pointed strongly to amendment and reform.

A singular feature in the case was the complexion of the lady, for it was of that sable hue which revealed her African descent. But in the knowledge that his affections were in every sense reciprocated, the doctor forgot her color, so that whenever he referred to it, he declared that it deepened his affection for her. For a time after their marriage their happiness was unalloyed, but, as months went by, the fascinations of the bride began to attract other admirers, and the green-eyed monster invaded the home of Dr. Little. At first he gently and lovingly remonstrated with his wife for her innocent—as he called it—freedom with other gentlemen. The lady thanked her lord for calling her attention to her thoughtless behavior, assuring him that it was mere thoughtlessness, that her affections were so strongly fixed upon him that she could never, for a moment, think seriously of any other man, and the doctor was happy again. But "O, frailty, thy name is woman!" His happiness was brief, for he soon had the most indubitable evidence of her unfaithfulness—and what rendered the matter worse—her favorite was a gentleman of her own color. As there was no doubt of

her guilt, the doctor lost his temper and gave her a beating which nearly proved fatal to her.

He was indicted and brought to trial for an assault with intent to kill, and in default of bail was committed to jail. P. C. Van Wick, Esq., a very able lawyer, was then District Attorney of the city and county of New York, and conducted the prosecution. Mr. Sampson, as we have seen, appeared for the doctor, and his defense was as singular as it was able and bold. After the prosecution rested there seemed little hope for Dr. Little. The people had established a case against him so heinous that a term in the state prison seemed inevitable for the offender. Mr. Sampson arose, and, to the astonishment of the bar, jurors and spectators, announced that he should call no witnesses for the defense.

"If your honors please," said he, in his most impressive manner, "I propose to adopt a defense that will greatly abbreviate this trial. I shall introduce no evidence on the part of the prisoner at the bar; I shall go to the jury on the weakness of the people's evideuce, and insist that the prosecution has elicited a perfect defense for my client. Your honors seem to be surprised, and my learned friend, the District-Attorney astonished, but you will change this surprise into another emotion, that of sympathy for the accused, and belief in his innocence."

Then turning to the jury, he addressed them in the following singular but strangely effective manner:

"Gentlemen of the jury, I insist that a more tender, considerate and affectionate husband than Dr. William Little—the prisoner at the bar—does not exist; he is one that 'loves not wisely but too well; one not easily

jealous, but being wrought, perplexed in the extreme,' for one little moment forgot himself in his anxiety to adjust a great—a terrible wrong. Who among us all would not have done likewise ? therefore let us set down nought in malice against him. Othello committed murder to avenge a fancied injury, and we all bewail his fate. But here is a real wrong—a heartless invasion of the sacredness of nuptial rights, and, instead of murder most foul, only a punishment is inflicted in love, affection and a broken-hearted sense of duty. Blackstone,—who, if we read history aright, was the tenderest of husbands,—lays down the law favoring the right of husbands to use the lash in chastisement of offending wives, and thus the doctor is sustained by law, for none can deny that the offense of his wife 'was rank and smelt to heaven;' and then there is the justification, as manifested by facts elicited by me on her cross examination.

"And now, gentlemen, I propose to show you that the doctor's alleged offense was a dissembling of passionate love—savoring of the memory of its 'young dream'——rather than wanton cruelty. I perceive you smile, gentlemen—and your smiles are comforting, for they show that the dark and sombre clouds—the lightning and thunder, which my learned friend has brought to bear on this case—have passed lightly over you, and that a happy, genial sunlight pervades your minds, in which sympathy and due consideration will fructify and ripen.

"As to the singular choice of my client, let me say that there are causes which present such strange contrasts of light and shadow, such powerful effect of *chiaro-oscuro,* that no language can highten their

imagery. But still, to every imagination the subject appears different. You, of course, do not know upon what grounds my client may have placed his apparently singular choice; certainly, he has done no more than 'the gentle Desdemona'—the beauty and pride of Venice, did—and as to his taste, who shall question it? since every man may exercise his taste to suit himself. Remember that what seems black in your eyes and mine, may seem fair to another. The education of a physician, gentlemen, is not that of a lawyer. The former ranges through the varied fields of nature, bound by no narrow limits. His genius is not cramped down to inflexible precedents—it is not narrowed by ironclad statutes 'in such case made and provided.' To the doctor here, the great volume of nature has been widely opened. To him, divine philosophy has taught that distinctions in colors are merely meretricious, depending much upon the manner in which the sun's rays strike them. Hence, the sable prince of Morocco, in his appeal to the beautiful Portia whose picture he sought—exclaims, 'Mislike me not for my complexion, the shadow'd livery of thy burnished sun to whom I am a near neighbor and near bred.' Let me remind you that the whiteness of the sun's light arises from a mixture of all the primary colors; that there are flowers—like the heart's-ease—the petals of which are in different parts of different colors—some darker, some lighter—yet all harmonious in the same delicate and beautiful flower. Why then, as we turn to the intellectual world, may not our exquisite conceptions of beauty—descriptions of which melt into emotions and contemplation bodying itself into reality and developing beauty out of incongruity—be re-

spected? Why may not the color of the races blend in society, even to its most delicate frame-work? This woman, gentlemen, was my poor client's heart's ease; to him, the deeper its color the rarer its combination of beauty, saying nothing of its odor. Now, gentlemen, if a late historical discovery can be relied upon—that Adam—our common father—was a black man, a marriage in his family, between black and white members of it, can disgrace no man. Therefore the marriage of Dr. Little with this sable lady was perfectly proper. Neither custom, philosophy nor theology forbid it. The doctor loved his wife—still loves her—to him that love is sacred, as is her person.

"Having thus disposed of this question of intermarriage between persons of opposite color, I proceed to another part of my defense—intended by my client only for love and privacy. I shall read you a letter which no pen but that of a lover could have traced. It was, of course, written within the walls of a dungeon. It bears date the 4th of June, and is addressed to Mrs. William Little as follows:

"'I received your kind letter of the first of June and am very sorry that you are unwell and that my horsewhip and fists were in some manner the occasion of your illness. Perhaps, after all, your love of variety and your preference of a person of your own race had something to do with the matter. Perhaps these were its principal cause; but I did not intend to refer to that, as it is merely a matter of taste after all. I want my coat; I want my pants; I want my jacket at Mrs. Simon's, as I have nothing to lie on in this languishing place but my clothes.'

"Now, gentlemen, is not this repentance in sack-cloth and ashes? But see how his emotions deepen:

"'You write that you'll not appear against me in court, which will be best, as I have not forgotten my marriage vow. The unhappy situation in which I am involved by your hastiness devolves on me the necessity of addressing you, which cannot fail of impressing your mind with uncommon seriousness, especially when you consider how our characters are stigmatized by your imprudence. What's a horsewhip for? Let your preference of color and of odor answer.'

"Gentlemen, since these parties are so sensible of their own imprudence let us not widen the breach between them, but pour balm into their wounds and let not the records of this court transmit to posterity the quarrels of two who loved so dearly.

"'You may, my dear Jane, assure yourself upon the testimony of your dear husband, what has been taught by the most bitter experience, that were our perplexities known—which the embargo on our ports and the troubles with England involves us in, it would extinguish—at least mitigate the keenness of a reflection that we both shall endure to all eternity. Had I had an embargo on my house, my dear Jane, your preference for color and odor would not have been indulged in, and you can see the happy result.'

"Gentlemen, how affectionate, how thoughtful is all this. You will see he makes one more demand upon his wife, and that is he wants his diploma, the title of his rank and honor. Hear him:

"'I want my diploma; I let you have it that ever-

memorable morning, when you ran after me, when I came from—from—well, you know where ; likewise the summons I had since I came here to attend the medical society, which you got some how. I have nothing more to observe.

'Your affectionate friend,

'WM. LITTLE, M. D.'

"Gentlemen, why should a man who loves like this man, who regrets the past so seriously, and who promises so solemnly and impressively never to repeat his little fault, why should he longer be kept from the object of his *passionate* love ? It was thus that Petrarch would have written to his Laura, thus Eloisa might have addressed her Abelard ; indeed, did she not write him, cursing all laws but those which love has made ? Who can say that Petrarch, under similar circumstances, would not have used his whip and fists, particularly if there had been in his Laura such a strange preference for color and perfumery as the lady in this case exhibited ?"

Here Mr. Sampson turned to the lady, who was bathed in tears, exclaiming, "Madam ! can you be so black as to further prosecute this man who loves you so fondly, who dotes upon you and your charms, and who lives only in his love for you ?"

"No ! No ! No !" she cried in agony of grief. "If the judge up there will only forgive him I will. Oh ! judge, do ! do forgive him !"

"Then," said Sampson, turning to the prisoner, "Dr. Little, give the lady your arm."

The doctor obeyed. "Now officers," continued the

lawyer, "make way for Dr. William Little and his wife to pass!" There was something so commanding, so singularly ludicrous, in this order that it was obeyed. The District-Attorney, after an ineffectual conflict between mirth and decorum, was unable to interpose any objection to it, and Dr. Little, with his ebon wife on his arm, walked out of the court house unmolested, while the bar, jury and spectators were convulsed with laughter at this singular and amazing termination of this exciting and important trial.

When order was restored, the District-Attorney said, "Sampson, I shall indict you for aiding a prisoner to escape."

"If you do I shall justify under the plea that I was only aiding science and art in blending colors, evolving perfumery and connubial affection," said Sampson.

A gentleman from the country visiting New York, after listening to an Irishman's praise of Sampson as a lawyer, asked, "What is his peculiar forte?" This was a puzzle to the Irishman, and the question was repeated as follows: "What is Mr. Sampson most remarkable for?"

"Ah, I understand. It's with the jury, sir, the jury, sir."

"Well, how does he manage the jury?"

"Troth, this way. He blarneys them; that is, he first butthers them up; then he slithers them down, and by that time, be jabers, they are for walking with him straight to any verdict he is wanting—and no mistake."

Mr. Sampson was the author of that celebrated book, "The Irish Emigrant," in which, as has been

said by another, there are passages whose grand, sad tones, like those which sweep across the psalms when those of old were compelled to sing the Lord's song in a strange land, with their harps on the willows, and a home pathos equaled only by Campbell in his "Exile of Erin," causing the tears of Irishmen as well as Americans to fall fast on its pages.

CHIEF JUSTICE MARSHALL AND SOME OF HIS ASSOCIATES.

His Early Struggle with Poverty and Subsequent Triumph—A Tilt with Patrick Henry—Marshall's Elevation to the Bench—An Account of Judges Jay, Story, Patterson and others—An Estimate of Marshall's Character, Attainments and Position.

At the close of a pleasant day in the month of May, 1781, a young man, apparently twenty-four years of age, weary and wayworn, arrived at the village of Fredericksburg, on foot. Making his way to one of its principal hotels, he asked of the landlord lodging for the night. This person—a sort of aristocratic boniface, after looking the young man over, coldly replied: "No, sir; you look too much like a pauper for me to entertain." "But I am not a pauper, sir; and I will pay you for my lodging. I have walked a long distance to-day, and I am very weary," said the young man, a flush overspreading his fine intellectual face, a face that illy compared with his dilapidated attire. "I told you that I could not keep you, and I shall not, and that ends it." The young traveler, drawing a long sigh, turned away and found a less pretentious but more benevolent inn-keeper who furnished him accommodations for the night. The next morning he continued his way home, which was not far from Richmond, Va.

Years sped on, bringing with them many changes.

They brought the young traveler up from obscurity and poverty to the highest honor which his native state could confer on him, as Legislator, Minister of State, Foreign Ambassador and finally to be the presiding officer of the Supreme Court of the United States. His name was John Marshall. "Let me say of him," said Daniel Webster, "as the illustrious Fox said of Lord Camden, '*Quem gratia honoris nomina*,'—whom I name only to praise." The incident we have related occurred when young Marshall was returning home from Philadelphia, where he had been honorably discharged from the Continental army. When he was twenty years old he enlisted as a private in one of the Virginia regiments. He was, for meritorious conduct, promoted to the rank of first lieutenant, in which position he served out the term of his enlistment. He had participated in many battles, and though young in years, was a war-worn veteran, poor in purse, like all the discharged officers and soldiers of the Revolutionary army.

John Marshall was born near Richmond, Va., August 19, 1755. He was the oldest of fifteen children. His father, Colonel Marshall, was a highly educated and much esteemed Virginia gentleman. As his means were limited it was impossible for him to give any of his children the advantages of a collegiate education. But, being an accomplished scholar, endowed with a happy faculty for imparting instruction, he superintended with much success the education of his children. The future chief justice was a natural scholar. "His mind grasped after knowledge with the intuition which causes the tendril, buried in darkness, to lift itself up to the pervading life-giving sunbeam." He knew how to adapt

his mind practically to his studies, could turn his eyes upon himself, and understanding the comparative action of his own powers, knew which of them required most tone and which, if any less; thus avoiding the sad mistake of cultivating the showy at the expense of the solid. Under the tuition of his accomplished father he acquired an excellent practical education. But inasmuch as he was not numbered among the alumni of any college it has been said of Marshall, as Dr. Johnson said of Shakespeare, "it is much disputed whether he owed his excellence to his own native force, or whether he had the help of scholastic education, the precepts of critical science and the examinations of ancient authors." It is safe to say that Marshall owed his intellectual eminence not only to his native force, but to the help of "scholastic education."

As Shakespeare's works "describe an extraordinary species of mind, perplexing to all modes of analysis, all powerful and excursive," so Marshall's legislative speeches, judicial opinions and other productions describe an equally extraordinary species of mind, and an intellect of surprising strength and subtlety. His amplitude of mind rendered him in legislation the equal of Chatham, Pitt and Fox; in jurisprudence the peer, if not the superior of Mansfield and Ellenborough. Notwithstanding his apparently prosaic nature, he was passionately fond of poetry, and in his earlier years courted the poetic Muse with considerable success, though few of his effusions were ever published. Though his writings display little poetic embroidery, there flowed through them a beautiful classical coloring. Pope was his especial favorite among the British poets. Marshall

could have adopted Byron's views of Pope, who said : "I have always regarded him as the greatest name in our poetry. He is a Greek temple with a Gothic cathedral on one hand and a Turkish mosque and all sorts of fantastic pagodas and conventicles about him. You may call Milton and Shakespeare pyramids, but I much prefer the Temple of Thesus or the Parthenon to a mountain of burnt brick." At the age of twelve he had copied several times all of the "Essay on Man," and could repeat page after page with perfect exactness, from the works of Shakespeare, Dryden, Pope, Campbell and many other standard poets. We may describe Marshall's manner of reading as Dr. Prettyman did the youthful Pitts : "He was a nice observer of the different styles of the authors he read. When alone he dwelt upon striking passages of an orator or historian, and noticing their turns of expression, marking their manner of arranging a narative or explaining their avowed or secret modes of action. It was a favorite employment of his to compare opposite speeches on the same subject, and to exaime how each speaker managed his own side of the argument or answered the reasoning of his opponent. This severe training prepared him to enter with ease and delight into the most abstruse questions in political and moral science and in jurisprudence."

While stationed with his regiment in Philadelphia, he managed by the most severe economy to save enough of his pay to attend a course of law lectures ; and it was this which directed his attention to the legal profession. On his return home, young Marshall continued his legal studies with such success that in June, 1780,

he was admitted to the bar of Virginia; but instead of immediately entering on his practice, in obedience to another call for troops to oppose the invasion of Arnold, he returned to the army. That invasion terminated, he returned home and entered upon the practice of his profession. He distinguished himself as a terse, logical, pleasing speaker at a famous debating club in his native town. Here he exhibited that uncommon talent for reply—that geometrical method and clearness which subsequently distinguished him in legislative bodies. To such a body he was soon called. In the year 1782, at the age of twenty-seven, he was elected member of the Virginia Legislature. In the autumn of that year he was appointed a member of the Executive Council of that State. In 1787 he was elected as representative of the city of Richmond to the Legislature, and continued to occupy that station for three successive years. So distinguished was his career on the floor of the Legislature that upon the recall of Mr. Monroe, as minister to France, President Washington solicited Marshall to accept the appointment as his successor, but he respectfully declined. In 1799 he was elected and took his seat in congress, where his commanding talents were at once recognized. But he did not retain his seat long in that body, for in 1800 he was appointed and confirmed Secretary of War. Before he could enter upon the duties of that position there was a vacancy in the office of Secretary of State, and this exalted place was tendered him. He accepted it, and entered upon its duties, but only for a brief period. Early in December, 1800, Oliver Ellsworth, Chief Justice of the United States, was made ambassador to France, and on the

31st day of January, 1801, John Marshall was appointed Chief Justice of the United States in his place. It has been said that few of the earliest and most illustrious chief justices and of their equally illustrious associates, were distinguished lawyers. An eminent statesman of Marshall's time, speaking of him, said, "One of the greatest of his merits is that he is not overlearned in the law." It is true that his experience at the bar was comparatively limited ; but brief as was his legal career he had distinguished himself as the ablest constitutional lawyer of Virginia.

In the year 1788, while still a member of the Virginia Legislature, the all-absorbing question before the people of that State was that of the adoption of the Federal Constitution. Marshall strongly favored its adoption ; but there was another illustrious orator who opposed its adoption ; this was Patrick Henry, who threw the whole weight of his great influence against the Constitution, and became the leader of that powerful party who desired its rejection by the people. Marshall was the leader of an equally powerful party who agreed with him on this great question. The debate on this question in the Virginia Legislature was unequalled in brilliancy, in research and depth of argument. Henry was impassioned, brilliant, abounding in elegant sallies of wit and effectual logic. If at times his language was too exuberant, still it was vigorous, and reason shone out of it like a crystal. Though Marshall was not lofty or imaginative, he possessed oratorical powers which made him a fully armed chieftain in debate, capable of successfully coping with his illustrious opponent. The contest was long and doubt-

ful ; when the final vote was taken Marshall was victorious, but only by the small majority of ten. It was enough, however, for it was generally conceded that through his influence, labors and eloquence Virginia adopted the Federal Constitution. Such was the experience of John Marshall when he entered upon his duties as Chief Justice.

Down to the breaking out of the rebellion, the Chief Justices of the United States were Jay, of New York ; Rutledge, of South Carolinia ; Marshall, of Virginia, and Taney, of Maryland, John Jay—a name of which the Empire State has always been proud—was not only its first Chief Justice, appointed by an ordinance of convention, commissioned by council of appointment October 17th, 1777, but he was also, as we have seen, the first Chief Justice of the Supreme Court of the United States. Among the most distinguished Associate Justices of the Supreme Court of the United States during the period we have named, were Cushing, Brockholst Livingston, Judge Paterson, Bushrod Washington, and Joseph Story. It is proper to add that Rutledge, appointed Chief Justice in the place of Jay, never took his seat, having been appointed to a foreign embassy soon after his nomination as Chief Justice, and Justice Ellsworth was appointed in his place. It will be seen that Chief Justice Marshall, "like ancient Glanville and modern Erskine, marshalled squadrons before he marshalled pleadings."

It is a singular fact in history that the appointment of Joseph Story, as Associate Justice of the Supreme Court, was made under circumstances similar to those which attended the recent appointment of Mr. Justice

Blatchford to the same position. President Madison had nominated John Quincy Adams, who had recently been Minister to St. Petersburg, to the office of Associate Justice, and his nomination was ratified by the Senate. But both nomination and ratification were made without the knowledge of Mr. Adams. When they were made known to him, after much deliberation he declined the honorable position tendered to him. The political opponents of the President and Mr. Adams sharply criticised the motives of this appointment as being a part of some dexterous political manœuver. But as Mr. Adams was a prominent aspirant to the presidential chair he declined the honors proffered him, preferring to be Chief Magistrate of the nation rather than an Associate Justice of the Supreme Court. It was said that Mr. Madison tendered him the position in the hope of removing from the field a powerful contestant for presidential honors.

It was with much difficulty that Mr. Madison selected a candidate in the place of Mr. Adams ; but at last his attention was directed to Joseph Story, of Salem, Mass. Mr. Story was then a young lawyer, who had served with some distinction as a Representative in Congress for a part of one term. He had exhibited marked ability, however as a Speaker of the House of Representatives of Massachusetts. "Learned, indefatigable, no man living has contributed more to legal literature, and no member of the Supreme Court has for so many years left his impression more distinctly on its proceedings. His written works on Legal Science, on Constitutional Law and Legal Literature converted English

and European contempt into admiration of all the departments of American law, learning."

Judge Chase, it is said, was in the habit of telling the New England Bar, that their appeals from one court to another made every case a "rubber," so that the winning party must win two out of every three games, or he lost the stakes.

Judge Washington was small in person, and nearly as negligent in dress as was Martin Grover. In the early part of his judicial career he lost the sight of one of his eyes by intense study. Like Martin Grover, too, he was immoderately fond of tobacco; when an argument commenced he took an immense quid, and if the discussion was lengthy he acquired patience and attention by frequently stocking his mouth with a new supply of the weed. "If," said a facetious lawyer, "Justice Washington is not famous for his quiddities of the law he certainly is for his quids and quiddities of tobacco." Judge Washington was a nephew of the illustrious Father of his Country—one of the most eminent and learned of the judges of the American Bench. "No man ever feared responsibilities less, none could be more imperturbable, silent and patient during an argument until the time came for him to speak. He was inimitable in condensing and clarifying a subject so as to drive his judgment home in the conviction of others. Perfect impartiality, inflexible decision, magnanimous candor, and untiring industry strongly characterized him. He was often known to sit sixteen hours on the bench without leaving it.

Judge Paterson was small in stature, somewhat insignificant in appearance when not on the bench, and al-

ways unassuming in his manners. The moment he took his seat on the bench he was another man, remarkable for his judicial dignity, polished, easy and graceful manners. He was a walking law library. At a hotel, among lawyers, suitors, witnesses, he was only one of the rest; but as soon as he was seated on the bench, they who a little before supposed him to be one of themselves, found, sometimes to their cost, that he was not the man they had taken him for, but every inch a Judge.

Judge Brockholst Livingston was one of the most gifted of the associates of Marshall on the bench. Before his appointment to that high position he occupied a commanding place at the bar. His learning and eloquence commanded the respect of the bench and the bar, and he wielded a most powerful and graceful pen, which gave him a prominent place among the renowned American legal writers. It is said that he had a more clasically shaped head than any of his associates on the bench. The legal student will find in his opinions rich and varied stores of legal learning.

Such were some of the associates of Judge Marshall on the Federal Bench, which he occupied for thirty-four years. His death took place at Philadelphia, July 6, 1835. During the time that he presided as Chief Justice, Kenyon, Ellenborough, Tenterden and Denman —four of England's Chief Justices, were removed from the Kings Bench by death. "In this long tract of time—one-third of a century—while numerous judges were passing over the law's disk, one superior luminary —not culminating until meridian age had matured his mental power, was perpetually radiating the light of his powerful mind, great learning and deep thought

upon our system of jurisprudence. This, we need not say, was John Marshall. His opinions, remarkable for comprehensiveness and full grasp of a case in all its subtleties, were wrought out by the severest thought. The manner in which thought presided over his deliberations and opinions is nowhere more beautifully illustrated than it is in the great case of Marbury *v.* Madison (1 Cranch, 138). If Marshall had never written any opinion but that, it would alone have immortalized his name. We have studied that opinion many times—always with renewed pleasure and profit. There Marshall laid down the true principles which underlie the foundation of government, there he drew sharp, distinct lines between the co-ordinate departments of government, defining and limiting the powers of each with the sagacity of a statesman, and the learning and consideration of a jurist. In all departments of legal literature there are no books in which there is so little authority cited as those containing his opinions; and yet those opinions were always coincided with by his associates on the bench and by the bar. When a case was argued, and left with the judges to decide, after carefully studying it, he would write out his opinion, hand it to Judge Story, saying: "There, Story, that's the law and justice in this case; now go and find the authorities."

In person Chief Justice Marshall was tall and commanding, though, perhaps, his form was too thin to be perfect. His countenance, full of expression, had that intellectual contour which is so strikingly delineated by the chisel of Canova. One of his most attractive features were his brilliant black eyes. A fanciful writer

once said: "Judge Marshall's eyes remind me of two deep wells of thought." With an almost boyish buoyancy of spirits, simple, and almost rustic *bonhomie* of manner, playful, convivial and kind, delighting in a hearty laugh as much as in a deep constitutional discussion." Judge Marshall was a favorite with all who knew him.

On the bench he was the personification of dignity and judicial courtesy. A strict disciplinarian, yet liberal in dealing with the rigid precisions, technicalities and rules of the legal profession. But no liberties could be taken with him. He was peculiar, even in his dignity; he had one peculiarity which attracted attention, and sometimes created amusement; this was in looking long and intensely without winking. Before the two hour rule was adopted it often happened that some boring lawyer would appear in court and speak for hours. Nothing annoyed Marshall more than this. When such a speaker appeared before him, the Judge would fix his black eyes upon him, their expression now turned to a stony gaze until the garrulous lawyer would wilt beneath his gaze. "When Erskine, the greatest advocate who ever lived, took leave of the bar, on his appointment as Chancellor he boasted that in the long period of twenty-seven years he had never been kept from Court by indisposition." Marshall never boasted; yet it is a memorable fact, that for thirty-three years he was scarcely ever absent from the bench, for any cause whatever.

May we not say then, that much of the history of the United States Supreme Court—grand and imposing as it is, is found in the judicial career of John Marshall?

TWO GREAT GOVERNORS OF THE PAST.

Clinton and Tompkins—The Young Forger—Powerful Efforts for his Pardon—How Tompkins Exercised the Pardoning Power—How Clinton Exercised it—Tompkins' Decisive "No" More Pleasing than Clinton's "YES"—Characteristics of the Two Governors Contrasted.

In the year 1815, during the third administration of Governor Tompkins, the only son of a man of high standing and extended political influence in the State, was charged with the crime of forgery. He was arrested, tried, convicted and sentenced to State prison for five years. He had graduated at Yale College with honor, was regarded as a young man of great promise—the pride and hope of his father—but in an evil hour he yielded to temptation and fell. His fall was a terrible blow to his parents and to a large circle of friends.

In the memorable struggles that had so repeatedly placed Mr. Tompkins in the gubernatorial chair of the State, the father of the young man had always been his strong and powerful supporter. Relying upon his influence with the Governor—upon some mitigating circumstances in the young man's case, and upon a numerously signed petition—he applied for a pardon.

The heart of Daniel D. Tompkins overflowed with sympathy and kindness. It was the home of every kindly emotion, and a desire to alleviate suffering was its ruling tenant. But an inflexible devotion to duty,

an unyielding fealty to justice presided over his whole being.

The grief of the father, the Governor's obligation and friendship for him, were powerful appeals. But, after a patient and careful investigation of the case, he felt that duty compelled him to refuse a pardon. "As Daniel D. Tompkins," he said to the father, "I could perhaps, pardon your son, but as the Executive of the State of New York my duty will not permit me to interfere in his behalf. As Lord Hale once said, when I find myself strongly inclined to pity a criminal, I am compelled to remember that there is likewise pity due the country and its people."

After waiting a few months the father again applied to the Governor for a pardon, but without success.

At length De Witt Clinton was elected Governor and Tompkins became Vice-President of the nation. Acting under the advice of some strong friends of the Administration, the father, always an opponent to Clinton, petitioned him for a pardon. He was enabled to produce some newly discovered evidence in his son's favor, and his petition contained the names of distinguished men in the State—the friends of Clinton, who desired to turn the influence of the father in their favor. Some of them ventured to say to the Governor, that if he could possibly see in the circumstances of the case, any grounds for granting the young man a pardon, it would, perhaps, be the means of giving their party a powerful ally—at least it would disarm an inveterate opposer. The Governor's reply was characteristic. "Nothing of that nature," said he, "will induce me to interfere in the matter. But I will give the case a careful investi-

gation—will look at what new mitigating circumstances there may be in his case, and, if in obedience to my duty I can release him, I will do so."

Some time after the papers in the case had been placed in the Governor's hands the father called upon him to urge a favorable decision. He was received with every consideration of respect, and with all he attention, all the cordiality which Clinton's somewhat reserved and distant manners permitted. But he was wanting in that winning grace, that easy affability which so eminently characterized Mr. Tompkins. When the interview terminated, the Governor placed in the hands of the father an unconditional pardon of his son. He returned to his hotel, where several of his friends, including a number of the opponents of Governor Tompkins, were anxiously waiting for him. His smiling face announced his success. After many warm congratulations, one of the gentlemen said: "You have always been a friend and supporter of Tompkins, but when you needed assistance he refused it; not only once, but twice. On the contrary, Mr. Clinton, whom you have always opposed, granted your son's pardon on your first application to him. Now, tell us, frankly, don't you think you have been mistaken in the man? Now, do you not prefer Governor Clinton to Tompkins? Come, tell us which you like best?"

"Well," said he, "Governor Tompkins twice refused to pardon my son; Governor Clinton pardoned him on my first application to him; because, in the facts and new circumstances I presented to him, he found sufficient reason for doing so. Both Governors acted under honest convictions, and now you want to know

which of them I like best. All I can say is, Daniel D. Tompkins, by all odds ; for he can decisively say ' No,' in a pleasanter way than Clinton can say ' Yes,' to save his soul."

" Time's effacing fingers" and a virtuous life, obliterated the memory of the young man's crime. He lived and died a respected citizen of Western New York—and his sons and daughters still live to bless his memory.

This anecdote, in a large degree, illustrates the characteristics of two of New York's illustrious Governors, of the past ;—De Witt Clinton and Daniel D. Tompkins. But so deeply interesting and instructive is their history and the times in which they lived, that a nearer view of both may be profitable and interesting.

They began their career with the dawn of that memorable cycle in American politics and manners, in which Thomas Jefferson is the central figure. It was a period which witnessed the last national struggle of the great Federal party for a consolidated government, in which, as their leaders insisted, they sought to prevent Democracy, which they termed popular chaos, from resolving society back to its original elements. It was a period when queues, or pigtails as they were called, and powder began to be discarded ; when gentlemen began to wear pantaloons instead of silken breeches, long stockings and knee buckles ; when the triumph of young republicanism gave to the people of the nation a form of government that represented them and executed their will. But the most brilliant and instructive part of its history is that which records the lives of so many patriots, statesmen, jurists, scholars and scientists who laid the foundation of our constitutional, statute

and common laws—of our progress in science, agriculture, trade and commerce.

It was Goethe who said, "thought expands but action narrows." But De Witt Clinton and Tompkins were men of thought and action. They were not characters who belonged to what Hume calls "the corners of history;" they stand out on its broadest page.

They were both adherents of that great "Apostle of Democracy—the preserver of its essential peculiarity," Jefferson. They differed, however, in regard to the manner in which his political doctrines should be reduced to practice, and they were representatives of opposing theories of internal navigation and improvement which, in the commencement of their career, began to agitate the public mind. Tompkins was more anxious to win the plaudits of the multitude and to secure present popularity than Clinton, who preferred and won a fame that grew clearer and brighter through future ages. He possessed that power of conceiving new and extensive plans; of constructing and bringing to bear on great objects a complicated machinery of means, energies and arrangements, and of accomplishing great objects. He possessed that creative energy which gave to his country those splendid improvements which have so materially added to its happiness and prosperity. He took an appeal to posterity for his reward. Now that partial friendship and fond admiration have ceased to exaggerate his merits, when the malignant hatred of political rivals and jealous contemporaries no longer magnify his defects—the common heritage of human nature, his appeal to time, is thankfully and reverently sustained. Like Tompkins, much of his life was a con-

tinual conflict of politics, the intricate details of which have rendered the action of parties in the State of New York a sort of anomaly.

There are, it is said some characters that seem formed by nature to take delight in struggling with opposition, and whose most agreeable hours are passed in storms of their own creating, who seem indefatigable in creating enemies to exhibit their power in subduing them. It is certain that no man ever made more enemies or was ever more bitterly assailed, vituperated and maligned—more malignantly followed with determined opposition "to the bitter end" than De Witt Clinton. His great project of internal improvements was frowned upon and sneered at with unequaled and withering contempt. "Clinton's Ditch" was the name sneeringly applied to the great work, the glory of the State of New York.

At a large banquet given by the opponents of the proposed Erie Canal, which took place in the City of New York, in December, 1815, the following toast was drank amid great enthusiasm: "De Witt Clinton and his mud ditch—the experiment of restless but weak ambition—the puerile effort of demagogues who propose to enhance their own benefits, at the expense of the State—may they be buried in the mud they propose to dig up."

At this time, when past events of magnitude in the history of the State and Nation, and the actors in them are so reverently celebrated, it seems almost impossible to believe that men like Clinton and other originators of measures that have ameliorated the condition of mankind, writers, scholars, scientists and inventors to whom time, "the avenger and adorner of the dead," has as-

signed a place in the temple of fame, could ever have been the victims of the malevolence and hatred which have followed so many of them to their tombs.

But these are the necessary ingredients in the composition of all true fame. It was not only in the old Roman custom, but in the nature and composition of all things, that calumny, detraction and abuse should be the essential elements of a triumph.

It was the fortune of the first Napoleon, at a critical period of his life, to be brought in collision with the genius of Wellington. It was the fortune of Clinton to encounter in his political orbit another mind stimulated with an unconquerable ambition, gifted with equal power of commanding success, and possessing more fortunate elements, concurring at the time for securing popular favor. This was Daniel D. Tompkins. The struggle was what might have been expected from the collision of such powerful rivals. It held in abeyance the ambitious designs of other men of historic renown, chief of whom was Martin Van Buren, whose insatiable desire for public honor could only be gratified when Tompkins and Clinton had left the political field forever.

It has been said, with much force, that the career of the most exalted politician reminds one of the player who, while clothed with royal habiliments, enacting Julius Cæsar or Richard III., excites admiration, perhaps veneration and awe; yet, when the curtain drops, he is transformed into an individual who attracts no interest whatever.

But De Witt Clinton was one of that class of men whom Scaliger designates as *homines centennarii*, who appear but once in a century.

In the Capitolium of Rome there are long rows of marble slabs on which are recorded the names of the Roman Consuls. But the eye wanders over this wilderness of names only to kindle upon a Cato or Cicero. So, too, in the long list of illustrious names that embellish the history of the Empire State the eye lingers longest on the name of De Witt Clinton, and it will kindle with animation over that of Daniel D. Tompkins.

"Clinton's talents existed in open and bold defense against his enemies and in his capacity of managing his cause by strong, well arranged arguments. In the cabinet and in the council he possessed commanding eloquence that gave him success; but, in the management of individual temper, in pandering to the passions and prejudices of the multitude, he was deficient. As much of his time was spent in meditation and study, he was absent in mind, often forgetful of familiar persons—characteristics inseparable from genius and scholarly habits, but unfortunate in one who seeks popularity."

It thus often happened that inferior, but ambitious, shrewd men, with more address, often gained temporary advantage over him.

"One defect in Mr. Clinton's character as a public man, indeed as a private citizen," says Mr. Hammond, "was the severity of his remarks about gentlemen who differed with him in political opinions." But the strength and devotion of his patriotism—the virtues that adorned every period of his life, and his undoubted integrity endeared him to the people more strongly than the platitudes and blandishments of the most truculent politician, leading him to an exuberance of power wielded by few men in State.

Nature, that had so liberally endowed his mind, was equally lavish with external embellishments. His personal appearance commanded respect. He was one of those men who, in a throng of people, would attract attention. "His person, in his youth and early manhood, was remarkable for its masculine beauty; as years advanced it assumed a majestic character. His stature was upward of six feet high, straight and finely proportioned; his eyes dark and expressive; and the lines of his mouth indicated determination and resolution." Like William Pitt, whom he resembled in many points of character, Clinton always dared to abide by his own decisions, never suffering popular prejudice or party clamor to deter him from any measure which his deliberate judgment approved, always confidently relying upon himself, while his plans were full of energy, extending beyond the present—beyond the consequences of the hour.

The history of Daniel D. Tompkins is that of a great and brilliant party leader, successfully advocating all-absorbing but transient party measures. By the natural affinity which gives minds like his appropriate employment, he found in the events of his times—chief of which was the war 1812—a sphere of action for which his wondrous energy and singular aptitude for public affairs qualified him—not as a soldier but as a statesman and diplomat, successfully guiding a patriotic and dominant policy. At the time when the opposition of the New England States to the war, and the almost treasonable action of the Hartford Convention, had cast a gloom over the patriots of the nation, it was

this policy that reanimated the people with a confident belief in the success of our arms.

If genius is that quality without which judgment is cold and knowledge inert, if it is that energy which collects, combines, animates and fascinates them, Tompkins was a man of eminent genius. But in dialectics, strength, diplomatic ability and scientific research he was not equal to Clinton.

Tompkins lived more for the present, Clinton more for the future. The political arena alone unfolded the strength of the former. In it he won almost unprecedented power and popularity; while the latter, if he had not united distant waters, "thereby making his own extended and magnificent monument, his literary production and his attainments in the useful arts and sciences would have marked him as a great and good man."

Again Clinton exhibited to the world that it is the prerogative of true greatness to sustain itself in adversity. He was for a time disappointed in his best hopes —retarded and baffled in the prosecution of his great designs, removed from official position, and overshadowed by the brilliant policy and towering fame of Tompkins. But with characteristic energy he applied himself to the highest achievement of the intellect; solaced himself with prophetic confidence that he was aiding a great work, a bond of union and fellowship with illustrious men of better days.

The circumstances of Mr. Tompkins' life denied him the advantages possessed by his great rival. The name and family of Clinton are inseparable from our colonial and State history. From De Witt Clinton's first en-

trance into public life down to the time of his death he was aided by powerful family influence.

He was a brother-in-law of Ambrose Spencer, the most powerful man of his times; who, as a statesman, judge, lawyer and scholar was one of the great luminaries of the nation. He was also connected with the Livingston family—another name for power. His father was General James Clinton, a gallant and distinguished officer of the Continental army. He was a nephew and favorite of the illustrious Governor George Clinton—a Governor of the State from 1777 down to 1792, a period of fifteen years.

It was at the feet of this great statesman that young Clinton learned those lessons in statesmanship that gave his own name to history.

Tompkins was the son of a Westchester county farmer possessing means little more than sufficient to educate his son, leaving him, in a great measure, dependent on his own exertions for his professional and political movements.

But he had a strong, well cultivated, active, self-sustaining mind, with full mastery of all its powers. So happily were all his mental and moral qualities tempered—so equally were they blended and balanced with his faults that they prevented each other from exceeding proper limit. "He knew how to conciliate the most enterprising spirit with the coolest moderation; the most obstinate perseverance with the rarest flexibility; the greatest rigor in governing with almost enchanting affability and grace of deportment; an intense love of the routine of business with the most shining qualities of action."

Nature also bestowed upon him many personal attractions; vigor of limb, elegance of form and attractive conversational powers.

He was always a Democrat, instinct with the most absolute confidence in those principles which, under the advocacy of Jefferson, led to the inauguration of Republicanism in the nation.

The measures he adopted and carried out, in regard to the war of 1812, to which we have already alluded, caused him to be almost idolized by a powerful party in the State and Nation. He was the strongest pillar of Madison's brilliant administration. That illustrious statesman, in recognition of his services, tendered him the office of Secretary of State in his Cabinet, to be vacated by Mr. Monroe—an offer which was modestly declined.

Tompkins was elected Governor of New York in 1807, and by repeated elections occupied the Executive chair of the State, down to 1817, when he left an unexpired term to enter on his duties as Vice-President of the nation.

His extraordinary and almost miraculous success at the gubernatorial election of 1813, against the opposition of Clinton and his powerful friends, while it affords evidence of his singular popularity, greatly increased it. It is a striking coincidence that Mr. Clinton was subsequently chief magistrate of the State four terms, and that Tompkins discharged the duties of that high office for the same number of years. The former, like Tompkins, left an unexpired term. Both of these men were elected Vice-President of the nation; both were defeated by the alleged treachery of their friends.

Clinton was a Senator in Congress; Tompkins a member of the House of Representatives. The National Cabinet and the great leaders of the Democracy in the nation united on him as the successor of James Madison, as President. But whatever hopes he had of success were swept away by the cold and subtle policy of Martin Van Buren.

Clinton and Tompkins were members of the State Constitutional Convention of 1801. In that distinguished body their rivalry commenced. With some slight exceptions, it continued until the latter closed his career twenty years after, in the Constitutional Convention of 1821.

Like Aaron Burr, Tompkins was in a great measure indebted to his fascinating manners and pleasing address for his singular success. Burr was the modern Alcibiades, gifted with the elegance, grace and talents, and tarnished with the faults of the accomplished, but dissolute, Athenian. Tompkins was the American Chesterfield; possessed of the peculiar dexterity, acuteness, force of intellect and insinuating manners, which gave that courtier and statesman so many places of distinction under the reign of George the Second. Clinton, as we have already said, was in many respects the William Pitt of his time.

In some respects Tompkins was to Clinton what Burr was to Hamilton—his evil genius. The most fortunate circumstance in the career of Tompkins, which by singular fatuity is not often accorded to public men, was the coincidence in point of time and of the full maturity of his talents with the successful and historic administration of James Madison. His measures and

policy in regard to that were as unfortunate for Clinton as were Clinton's internal improvement measures disastrous to him.

One of Governor Tompkins's measures will ever stand a perpetual monument to his name. This is his message sent to the Legislature January 28, 1817, recommending the entire abolition of slavery in the State of New York, which resulted in expunging slavery forever from the statutes of our great State. If in reference to internal improvements the action of Mr. Tompkins was that of a cool, calculating, wily politician, jealous of the fame of Clinton; in the cause of humanity, in that of public education, and in behalf of manufactures, he was bold, energetic, decisive and successful.

Clinton and Tompkins were called to the bar when very young—the former being twenty-three, and the latter twenty-two,—they brought to the forum all the accomplishments that a thorough classical and legal education could give. To these were added those peculiar native endowments, which qualify men to endure the "*Trials* and win the *The Triumphs of the Bar.*" Both were eloquent. Clinton's utterances were clear, strong and plain. His voice and attractive manner of speaking impressed his sentiments on the minds of courts and jurors.

Tompkins was a more graceful, insinuating pleader at the bar; particularly in discussing questions of fact, though perhaps, in a logical, subtle argument he was not Clinton's equal. Both left the bar after a brief but brilliant practice to enter upon those careers which, as we have seen, are recorded in history where they linked their names to immortality.

RECOLLECTIONS OF WILLIAM PINKNEY OF MARYLAND.

The Young Continental Soldier and his Tory Father—Young Pinkney and the Continental Artillerist—A Dead Shot—Pinkney and the Debating Club—How he Beat his Opponent—The Lawyer—His Triumphs at the Bar—Statesman and Foreign Minister—Amusing Scene at the Court of St. Petersburgh.

We have heretofore referred to a singular altercation between Mr. Pinkney and Daniel Webster, as related by a biographer of the latter, an altercation in which those great men are said to have exhibited characteristics so utterly at war with their real nature, that many refuse to believe the writer's relation of it.

We have seen Mr. Pinkney before the Supreme Court of the United States, the opponent of the ablest lawyer of his time, Thomas Addis Emmet, in a great national case. We have seen him hurried by the excitement and heat of that contest into an unprovoked and bitter attack upon his adversary. We have described the dignified, respectful, but searching reproof which Mr. Emmet administered to him, and then the beautiful, touching, magnanimous apology which Pinkney tendered to Mr. Emmet.

We now propose to take a nearer view of Mr. Pinkney, whose history is so replete with profitable interest. He was the associate and adviser of Washington, Jefferson and Monroe; an ambassador and foreign minister,

whose ability was acknowledged throughout Europe, shedding luster on the young republic he represented. At home he was regarded as a wise, sagacious statesman—a Senator in Congress—an orator of whom it has been said, "It is a disputed point who was the stronger in logic, Webster or he. Certainly he was Webster's superior in rhetoric, and he possessed all of Choate's elegance of language, and much more elegance of delivery." As a lawyer he stood at the head of the American bar, the rival of William Wirt, "the toil of whose lifetime it was to achieve those solid attainments which alone make brilliancy of utterance endurable in a court of justice."

He was born at Annapolis, Maryland, May 6th, 1764. His father was an Englishman by birth—a man of culture, sound common sense and practical judgment. When the revolutionary war broke out, as was natural, he strongly sympathized with his native country. But the boyish ardor of his son, who was then thirteen years old, was fired by the patriotic spirit that pervaded the country, and with all the enthusiasm of his nature he espoused the cause of the colonies. The thrilling words of Patrick Henry, "Give me liberty, or give me death!" continually rang in his ears, and nothing but his extreme youth prevented him from becoming a soldier in the continental army.

On one occasion, soon after attaining his seventeenth year, he was absent from home so long that his father, in alarm, caused search to be made for him throughout the city. But he was nowhere to be found. At length he was traced to the fort in Annapolis. Thither Mr. Pinkney hastened, and there, to his astonishment and

disgust, found his boy armed and equipped as a Continental soldier, guarding the ramparts. Obeying the paternal command, he stacked arms, doffed his accouterments, and took up his line of march for home. As he was the idol of his father, the only punishment he received was a slight reproof and a mild lecture on the evils of rebellion.

A few days elapsed, when he was again missed at home, and again found by his father at the fort—this time, so actively engaged with one of the great guns, in learning the artillery drill, that he did not observe his father, who stood in speechless astonishment, at the boy's agile movements in the drill. Presently a ball from the gun struck the distant target full in the center, and young Pinkney, elated at the success of his favorite gunner, swung his hat, shouting "Hurrah for the Continental Congress and Liberty!" This burst of patriotic enthusiasm from his son almost petrified Mr. Pinkney. Here was "his boy, his beautiful, his brave," in arms against his sovereign, blending his shouts of rebellion with the thunder of rebel cannon.

"William!" said Mr. Pinkney, as he laid his hand on his son's shoulder, "William, what does all this mean?"

"Mean, father? it means that old iron-throat there, is the best gun in the fort, and that Bill Hazlett can send a twenty-four pound shot from her, right through the hull of any British ship of war that dare enter the harbor!" said the excited boy.

"You are too young for a soldier, my boy. So go home with me and we will talk these matters over," said Mr. Pinkney. The boy obeyed, and after that day

Mr. Pinkney never exhibited any opposition to the cause of the colonies, nor any zeal for that of King George.

The education of his son was one of the chief objects of his life. The desire of young Pinkney to attain an education was so great that he devoted all his energies to his studies and abandoned all thoughts of becoming a soldier, though he remained an ardent patriot.

Such, however, was the disturbed condition of the country, that he was denied the advantages of a collegiate education. But he was placed under the instruction of Louis Brathand, a man of rare attainments, an accurate scholar, distinguished for his singular faculty of developing the powers of his pupils, and stimulating their minds with scholarly ambition. Mr. Pinkney in after life often referred to his instructor with warmest affection. "Under his influence," he used to say, "I formed those habits of industry in study, and perseverance in whatever I undertook, which enabled me to adopt the motto of Burke, *Nitor in adversum.*"

He remained under the instruction of Brathand over three years, becoming an excellent Latin scholar, and making much proficiency in the Greek language, mastering many of the great writers of antiquity. He learned by heart Cicero's great forensic oration in behalf of Oppianicus, a Roman knight of splendid family and fortune, charged with the crime of attempting to poison his son-in-law, Avitus Cluentius, one of the exquisite productions of antique legal oratory.

Young Pinkney also translated Cicero's Catilinarians, most of his Phillipics, and his Verrine Orations. The famous oath in Demosthenes, "the most figurative and

highly-wrought passage in all antiquity," was his especial favorite, and he loved to repeat it even in the latest years of his life. Under the discipline of his preceptor, he acquired "those habits of systematic thought, and the admirable arrangement of all his acquired knowledge, which made his memory one vast storehouse of facts, principles and illustrations, ready for use at a moment's call." Pinkney was, through all his life, a student. His proficiency in all his studies was that which a man of vigorous faculties and determination of purpose can make under difficulties. His study of the great masters of eloquence developed in him those oratorical powers, and that polemical skill which resembled intuition. Fortunately for him he was, in his youth, surrounded by influences which elicited not only his intellectual powers but his better feelings. Still he exhibited, in his youth and in mature life, faults inherent in human nature, which, perhaps, should not be omitted in drawing his mental portrait.

"But when a painter," says an exquisite ancient biographer, "has to draw a fine and elegant form, which happens to have some blemish, we do not want him to pass over that blemish, nor yet mark it with too much exactness. The one would spoil the beauty of the picture; the other destroy the likeness." Among Pinkney's faults—and we can say, without affectation—that he had but few—was his excessive vanity. Indeed, to use the language of another, "He was the vainest man of his time; he was even vain of his vanity." But it must be remembered that Cicero, one of the greatest men and an elegant gentleman; Pliny, a writer and critic, whose fame is equal to that of Tacitus, were

intensely vain and egotistical; that Arian, "whose pages exhibit all the learning and polish of ancient Greece, on one occasion suddenly interrupts the thread of one of his most charming narratives, to inform his readers that he himself, is as eminent among the Greeks for eloquence as Alexander the Great is for war." Neither must we forget the self-esteem that so frequently tarnishes the character of many great men of modern times. Some one has said that vanity is a badge of greatness, and self-confidence the propeller of the intellect.

Another of Pinkney's faults was his impatience and irascibility when strongly opposed or closely pushed in an argument at the bar or in the Senate. But his natural generosity and magnanimity usually kept these traits within bounds. It was Pinkney's ambition in youth to become an orator and logical debater. He felt that to attain this it was necessary to possess, not only native quickness and force of mind, but he must have long-continued and constant practice; that an intimate knowledge of history and metaphysics were also necessary. Therefore history, to him, even in his earlier years, "was not a chronicle of events, a picture of battles and sieges, or of life and manners; but to make it *history*, it must bind events together by the causes which produced them." Imbued with such feelings as these, with his wonderful force of memory and activity of mind, he acquired an amount of historical knowledge that few men ever possessed, which enabled him, as Senator in Congress, to master every subject in debate with great facility.

But it was in the debating club, that much ridiculed,

but eminently useful school of mental culture, that Pinkney practically learned the art of oratory and oral reasoning. Next he acquired that artful use of logic and rhetoric that rendered him so irresistibly fascinating as a speaker. It is said that "he was animated in debates by that haughty impatience of a superior that characterized him at a later day." An amusing anecdote is related of his career in the club.

The popularity of its young and brilliant debaters always filled the large hall in which their discussions took place with the élite of Annapolis. On one occasion a question of especial interest had been assigned for discussion, and Pinkney was one of the leading disputants. In order to prepare himself he repaired to a secluded grove to rehearse his speech. As he approached the place he heard the voice of an animated speaker. Stealthily approaching nearer the orator, he discovered that it was his opponent in the coming debate —his rival, if not his superior, as a speaker—earnestly engaged in discussing the question of the ensuing evening. He had just finished his exordium, and Pinkney had the full advantage of his argument in advance. Taking a tablet from his pocket he noted down its main features, its positions and points, retiring unseen by his rival.

Pinkney spent the remainder of the day in preparing for the coming argument. "The result," he used to say, "was brilliant. In the evening my antagonist's speech—a very able one, and highly seasoned with rhetoric—was received with acclamation. But when I made my *extemporaneous* argument, I went so far beyond him in rhetorical effect, in refutation and sarcasm,

that my fame as an orator and reasoner threw my opponent in the shade and gave me unprecedented renown. All my struggles and triumphs at the bar—whatever fame I have gained as a parliamentary orator—never gave me so much exaltation as my triumph on that occasion. And yet it was mainly the result of an accident. So it is in life. Some little circumstance, some fortuitous event, may turn the tide of success in a man's favor; then he is called the artificer of his own fortune."

At one of the meetings of this debating society, Samuel Chase, then standing at the head of the Maryland bar—afterwards one of the Judges of the Supreme Court of the United States—was present. Pinkney made the closing argument of the evening. Chase was so struck with his readiness, spirit and vigorous debate, the beauty and richness of his elocution, the manliness of his figure, and his fine voice, that the next day he sent for him and invited him to become a student in his office. The invitation was accepted, and Pinkney remained with his accomplished preceptor and friend until 1786, when he was called to the bar.

He entered upon a brilliant and successful professional and political career.

In 1796 he was appointed by President Washington one of the commissioners with Mr. Trumbull on the part of the United States, under the 7th article of Jay's treaty with Great Britain. In July, 1796, the board, consisting of two distinguished English civilians, met in London and proceeded to examine the claims presented to it. Various interesting questions in inter-

national law arose respecting contraband of war, domicil, blockade, and the practice of the prize courts.

Pinkney's opinion, read before the board, attracted general attention at home and abroad, and established his fame as an international lawyer.

He returned home in 1804 and became a resident of Baltimore, where he continued the practice of his profession, which was now confined to the United States Supreme Court.

In April, 1806, he was appointed Minister to Great Britain, jointly with Mr. Monroe. In this capacity he won the esteem and confidence of Mr. Monroe, which continued through life. In the year 1807, the latter, fully satisfied that Pinkney's acknowledged ability as a diplomat enabled him to cope with all the great questions then being agitated between England and the United States, returned home. But it was not until 1811 that Pinkney closed his duties as Minister to the Court of St. James.

James Madison was then President of the United States, who very soon after his return appointed Mr. Pinkney Attorney-General of the nation. At the close of Mr. Madison's administration he returned to the practice of his profession; but he was immediately elected a Representative in Congress. This was in 1816. His friend, Mr. Monroe, was then President of the United States. From him Pinkney received the appointment of Envoy to the Court of Russia, and of special Minister to Naples. After discharging his duties at Naples, he proceeded to St. Petersburg—Mrs. Pinkney accompanying him. He remained at the Russian court until the summer of 1818, when he returned to

the United States and again resumed the practice of his profession.

While he was at St. Petersburgh an incident—related by one of his attaches—occurred, that exhibits many real features of his character.

"I was waiting one day," said the attache, "in Mrs. Pinkney's parlors for her husband to come to dinner. After waiting a long time he came in, black and dirty as any man. Without saying a word he walked up to a sofa, jerked off his hat and sword, and threw them violently down. Just then Mrs. Pinkney entered the room and in some alarm inquired what had happened.

"'Happened! Happened! I have been insulted, madame! Vilely insulted! Publicly insulted! That's what has happened.'

"At this," continued the attache, "my sword, as if by magic, leaped from its scabbard to avenge the insult to the representative of my country, and to a man I so sincerely esteemed and respected. In this warlike attitude I ventured to inquire in what way he had been insulted.

"'Sir, is not a man of my fame, my name, the representative of a great country like ours, insulted when he is required to get up at 8 o'clock in the morning to pay his respects to an illustrious Russian princess, who turns out to be a little girl eight years old? A Russian princess, forsooth!'

"Why, Mr. Pinkney," I ventured to say, "you were not expected until 11 o'clock."

"I know it, sir; but can a man, in this country, dress for such an important occasion in less than three hours? If he happens to leave off the least part of the

toggery he is obliged to wear, he would be charged by the great princess with disrespect. She would not like it, sir, the great princess would not like it. Why, some of the nobility have spent double that time in dressing for this occasion. Upon my soul I believe from their looks that some of them spent the entire night in preparing to meet this accomplished princess. I think the Dutch ambassador did not get his tenth pair of breeches on till long after eleven, for he came into the presence without his sword, sweating like a Turk, and half frightened out of his senses at his tardiness, for which he will doubtless be sent home. The more I see of royalty and its courts, and I have seen enough of them, the more I appreciate the common-sense simplicity of our republican court and our republican institutions."

In the autumn of 1818 Pinkney made his great argument before the United States Supreme Court, upon the question of the right of the States to tax the National Bank, one of the ablest efforts ever made before that tribunal. The principles of his argument were adopted by Chief Justice Marshall in delivering the opinion of the court.

In 1819 he was elected a Senator in Congress. Among his speeches that outlive him was that against the clause in the bill passed by the House of Representatives, for the admission of Missouri into the Union, upon condition that the introduction of slaves into the new State should be prohibited. He made his last speech in the Senate on the 17th of January, 1822, in the discussion upon the bill for establishing a uniform law of bankruptcy throughout the Union. But in February following, while preparing for an argument upon

the Maryland proposition, he over-exerted himself and was, on the 17th of that month, attacked by a severe indisposition. He lingered, much of the time in a state of delirium, until the 25th of February, when his splendid career closed in death. The event produced a profound sensation throughout the Union. His funeral was attended by both Houses of Congress, the President of the United States and his Cabinet, the Judges of the Supreme Court and foreign ambassadors.

In person Mr. Pinkney was a model of manly beauty, "which was exhibited in the elasticity of his well proportioned frame; in his brilliant, expressive eye, which had acquired calmness and depth from thought, and which, even in his maturer years, had lost none of the brilliancy of youth, and, finally, in the whole contour of his features." His entire devotion to his profession continued with unremitting perseverance to the end.

"If the celebrated Talon could say of the still more celebrated D'Augesseau, on hearing his first speech at the bar, 'that he would willingly end as that young man commenced,' every youthful aspirant for forensic fame might wish to begin his professional exertions with the same love of labor, the same ardent desire of success and distinction that marked the efforts of William Pinkney throughout his life," for his whole career was a model for American lawyers.

JOHN RANDOLPH AND MARTIN GROVER AT THE BAR AND IN CONGRESS.

Their Personal Appearance Compared—Webster's Terse Description of Randolph—His Significant Gesture—Grover's Scorching Address to the Jury in a Breach of Promise Case.

JOHN RANDOLPH of Roanoke was one of the most singular and at the same time one of the most illustrious of American lawyers and statesmen. A caustic sarcasm, almost brutal in the manner he used it, was one of his prominent characteristics. His ridicule was terrible, his wit flashing and bright, but it was always infused with so much bitterness that it was equally dreaded and admired. As Byron said of Conrad:

> "There was a laughing devil in his sneer
> That raised emotions both of mirth and fear."

Randolph was a powerful legislative debater. As was said of Lord Brougham, whom he resembled in many points of character, "for the material of his argument he sometimes went off to topics the most remote and apparently alien from his subject, but he never failed to come down upon it with great effect at last." In speaking, his favorite gesture was to reach out a very long arm, with a singularly long finger at the end of it, and point it directly at the person he was talking about. In this way he enforced his irony and sarcasm with almost appalling effect. "Of all the in-

tellectual weapons ever used by man," says Macaulay, "was the irony and mockery of Voltaire. Bigots and tyrants, who had never been moved by the wailings and curses of thousands, turned pale and trembled at his very name." The satires of Juvenal were more dreaded by the tyrants of Rome than the anger of the gods. I have sometimes thought that John Randolph might, with much propriety, be called the American Voltaire.

Some one asked Thomas H. Benton if Randolph was not a sort of legislative comet, frightening his fellow members, shaking pestilence and war? "No," was the reply, "he was a planetary plague, shooting down agony and fears on the members." A northern Senator asked Webster whether Randolph was an aristocrat or a Jacobin. "He is neither; he is an Ishmaelite. Every one's hand is against him—or would be, were it not for fear of him—and his hand is against every one," said Webster. He used the English language in perfect purity. It has been said of Shakespeare that one might as well attempt to push a brick out of its place in a well-constructed wall as to alter a single expression in his sentences. The same may be said of Randolph's sentences. He used to study the Bible more critically than any other book; but he studied it for its elegant, pleasing diction, for the grandeur and sublimity of its descriptions, its pleasing and startling antitheses.

But Randolph's voice—who can describe it? There was something startling, even thrilling in its strange yet beautiful cadence. It had a sort of silvery shrillness. When it rang out over a parliamentary body or at the bar it commanded instant attention. When he chose to make it so, it was soft, clear and sweet. But

he did not always speak in soft, sweet tones. He enforced his irony and contempt with a peculiar emphasis that sometimes resembled the deep, sharp notes of a trumpet. "He was very tall and very slim, and his complexion was sallow, lit up by clear, dark, expressive eyes; when he walked he stooped, taking long, striding steps, keeping his feet parallel. There was something in his step indicating that some one was in his way, and that such person had better get out of the way at once." The following anecdote illustrates the manner in which Randolph treated an aggressive and insolent assailant: During the winter of 1834, he was a member of the House, and in January of that year a fellow member to whom Randolph was greatly attached died. The deceased member was succeeded by quite a young and very conceited, ambitious man. He took his seat in Congress determined to gain notoriety by making a bitter attack on Mr. Randolph, and he took the first occasion to do so. Every one in the house was perfectly astonished at the hazardous attack of the new member. When he took his seat Randolph made no reply, and gave the matter no attention. Several days passed on, and a question came up in which he was deeply interested, and he delivered a very earnest and impressive speech favoring his view of it. As he closed, he said: "I should not, Mr. Speaker, have returned to press this matter with so much earnestness had not my views possessed the sanction and concurrence of my late departed friend, whose seat, I lament, is now unhappily vacant." At these words he pointed that long arm with that appalling long finger at the end of it, at the young member who had attacked him several days before.

The House roared with applause, and the young man never again ventured to attack John Randolph.

If there was a member of the New York Bar who resembled Randolph in the use of sarcasm, it was Martin Grover, who at times "squandered wit and pleasantry with the profusion of Rabelais." The spontaneity and art with which he used ridicule, rendered it quite as effective as Randolph's manner of using it; then it left no lacerated wounds where it fell. It was bitter, but, if I may use the expression—sugar-coated, and divested of Randolph's malignity. I have selected an extract from one of his speeches to a jury in an important case which illustrates Grover's manner of using sarcasm. He was once retained to defend a young man of good family, who had been indicted for the seduction of a young woman under the promise of marriage. It was a peculiar case. The lady was not very attractive, and then, she had passed that period when youthful indiscretion is an apology for departing from the paths of rectitude. But she was deep, shrewd, a masterly manager, quick in her perceptions, approaching old-maidism, and desperately in want of a husband. As she had other suitors, and was cruel to none of them, there were strong doubts of the young man's guilt. But he was, in a measure, in her cunningly spread net, and in danger of State prison. Nothing but heroic treatment, as surgeons say, on the part of Grover could save him, and he had it to the fullest extent. In summing up the case to the jury, he thus used his legal scalpel on the lady.

"Gentlemen of the jury," he said, "I have two witnesses in this case in favor of my client, to whom I propose to allude. One is common sense, the other

human nature. Both of these tell you it is absurdity itself to believe that this young man—to all appearances, fastidious and nice in his taste, could see in this woman anything to attract his attentions or arouse any emotions except disgust. Why, gentlemen, she is the Tabitha Bramble of this occasion. Let us look her over a moment; there she sits. She is tall and raw-boned. Her complexion has no Hebean richness in it. It is sallow; freckled; her eyes are gray—no, greenish, like a cat's. Her hair, usually such an attractive appendage of female beauty, instead of resembling the luxuriant ringlets of Minerva, looks more like the carroty covering of a Scandinavian. It is a of color of rusty brick, a rich, dirty, repulsive head. Only think, gentlemen, of that beauteous head, and those luxuriant locks resting lovingly on the shoulders of this love-stricken swain, while he whispers in her ear the soft cooings of his undying affection. Alas! gentlemen, instead of all this, the touch of that head to his shoulders would be the touch of an ogress. Then think of his implanting soft kisses—gradually heated up to impassioned busses —on those skinny, cadaverous lips. Othello died by his own hand after imprinting a kiss on the lips of the beautiful Desdemona. My God! Gentlemen, how quick would any sensitive youth, like my client, have rushed to suicide as Othello did, if, for any cause, he found himself kissing this woman of vinegar aspects. And thus, gentlemen, my two witnesses—human nature and common sense—will defeat her action."

Grover was right and the young man was discharged.

CHANCELLOR REUBEN H. WALWORTH ON THE BENCH.

The Circuit Judge—Tries the Three Thayers—Appointed Chancellor—Description of Mansfield Walworth as a Young Man—Scenes with a Law Student Seeking Admission Under Difficulties—Appearance of Walworth—Compared with Judge Marshall—His Singular Manner on the Bench—Scenes and Incidents.

GOVERNOR DE WITT CLINTON died on the 11th of February, 1828, and Nathaniel Pitcher, the Lieutenant-Governor, succeeded to the gubernatorial chair. Soon after these events Chancellor Jones resigned and the bench of the Court of Chancery was for a time vacant. Samuel Jones assumed the duties of Chancellor amid the fierce and irreconcilable party contests which characterized the illustrious career of De Witt Clinton. Before his appointment his splendid legal abilities, his varied accomplishments as a speaker and writer, gave him a highly influential position as a political partizan at home and abroad. While studying the history of his career at the bar it is difficult to conceive how he found time in the midst of his extensive professional duties to write those political documents, expansive literary productions, and powerful legal arguments, so diversified in manner, so elegant in execution. With the aid of the powerful intellect of Ambrose Spencer, Samuel Jones was to De Witt Clinton what Richelieu was to Louis Fourteenth. But the moment he ascended the bench

the politician was lost in the incorruptible magistrate who held the scales of justice with impartial firmness.

Reserved, unsocial and distant outside the aristocratic *coterie* in which he moved, in many respects he was not properly constituted for the discharge of judicial duties. Though his mind acted with a force and precision that rendered it like intellectual clock-work, it is certain the office of Chancellor was not suited to his taste ; hence his resignation.

No period in the history of our great State has ever been more fertile in judicial, legal, and legislative ability than that in which Chancellor Jones retired to private life. Among the names that shed lustre upon that period are Josiah Ogden Hoffman, Ogden Hoffman, Samuel A. Talcott, father of Judge John L. Talcott, Associate Judge of the General Term of the Supreme Court of New York, William L. Marcy, Thomas J. Oakley, John Savage, Reuben H. Walworth and others.

* * * * * * *

One of the first official acts of Governor Pitcher was to tender the chancellorship to James Savage. But as that eminent and learned jurist was then Chief Justice of the State, he declined. Walworth was then one of the circuit judges, who had discharged the duties of that office several years with singular ability and success. Among the great trials which contributed to his high reputation as a *nisi prius* judge, was that of "the three Thayers," tried at Buffalo in April, 1825. Some of the language used by him in pronouncing sentence upon the prisoners—three brothers—is not excelled in legal history. Walworth had been a colleague of Pitcher in the 17th Congress. In the discharge of his

congressional duties he had impressed Mr. Pitcher with his untiring industry, his sound, equitable, discerning mind, and when Judge Savage declined the office of Chancellor he promptly offered it to Walworth—who as promptly accepted it.

* * * * * * *

According to the rules of the Court of Chancery, candidates for admission to it were required to appear before the Chancellor in open court, take the oath of office, and sign the roll.

In August, 1843, a young law student who had been recently admitted to the Supreme Court, and who had passed his examination for admission to the Court of Chancery, went to Saratoga, the residence of Chancellor Walworth, for the purpose of completing the formula that admitted him to the degree of solicitor in chancery. On his arrival he inquired for the court-house, where the Chancellor, as he supposed, was holding court, surrounded by a brilliant assemblage of lawyers who had gathered there from all parts of the State; he was, therefore, greatly surprised when informed that the Chancellor always held his courts at Saratoga in his own house.

A short walk brought him to the plain but pleasant mansion where court was in session. At the gate in front of it stood a young man just passing the stage of boyhood. His form, set off by a fashionable dress, was exceedingly graceful and attractive; but it was not his form and dress that chiefly attracted attention; it was the bold, buoyant, intelligent expression that presided over his handsome face. There was something in the restless though penetrating and semi-impudent

glance of his eye that indicated a haughty, arrogant nature, and an ill-regulated mind.

"Will you be good enough to direct me to the room where Chancellor Walworth is holding his court?" asked the student as he approached the young man.

"It is where you see those windows up," said he, surveying his interrogator with quick, sharp scrutiny. "Have you come," he continued, "to argue a half dozen cases before the Chancellor, dissolve two or three injunctions and set aside the charters of some country banks whose bills have red backs?"

"Neither. I am not a solicitor yet, and can do none of these things, even if I had the ability. But I have come here to be admitted to the Court of Chancery, so that I can do something if I have an opportunity."

"Oh, that's it. Yes, I see. Well, you may make a solicitor of some kind. But how far have you come for all this?"

"I live in Cayuga county."

"Do you? Then perhaps you know ——, who lives at Auburn?"

"Yes, I am some acquainted with him."

"When you see him again, tell him you met an old school-mate of his at Saratoga."

"What name shall I give him?"

"Mansfield Walworth. I think he'll remember me, for I gave him a thrashing just before we left school. He said if he lived he would some day thrash me in turn—tell him, please, that I am waiting for him."

"I will do so. If he told you he would thrash you, in time he will keep his word, for he is a good fellow, and honorable; besides I think he can do it now with-

out much trouble. Are you a son of the Chancellor ?"

"Yes, sir, I am."

"When strangers meet, as we have, it is proper they should be introduced. I am Mr. ——, from Cayuga county."

Walworth, who evidently did not relish what the stranger had said regarding his school-mate, replied, as he drew himself proudly up :

"Perhaps I have no desire to make your acquaintance. You should have thought of that before you proposed to *honor* me with an introduction."

His remarks and manner had something in them approaching to the *bizarre,* blended with a kind of repulsive sarcasm which he intended for dignity.

"I confess," said the student, "I did not stop to think much about the matter one way or the other, and really I care but little about it. As you are the Chancellor's son I took you for a gentlemen. But, on the whole, I don't think I should gain much if you condescended to permit the introduction. And now, Mr. Mansfield Walworth, if you will tell me which of those doors leads to the Chancellor's court-room our acquaintance shall end where it began. I am very anxious to take the solicitor's oath and leave for home to-day, if possible, or I should not have troubled you at all with this matter," said the student.

"You will be compelled to wait some time before you can take the oath, for John A. Collier and Daniel S. Dickinson are arguing a case before my father, and they are both endless. Collier is talking now, and has been for a long time ; perhaps when he gets through,

which ought to be soon, you can manage to be heard before Dickinson gets the floor. Come with me; I'll show you the way to the court-room," said young Walworth, in a more respectful manner than he had hitherto exhibited.

The young lawyer obeyed, and soon found himself in a plain room, twenty feet square, surrounded on all sides by book-cases filled with law books.

A long table covered with green cloth stood in the center of the room, at the end of which sat a man past the prime of life, above the average height and well proportioned, though perhaps his form was too thin to be perfect. His face was grave, intelligent and thoughtful. In its contour there was indication of firmness, tinged with self-confidence, if not conceit. But on the whole his features were those on which a painter seeking to delineate the portrait of a venerable, benignant, still inflexible judge, would seize as the realization of his *beau ideal.*

Without the ermined stole, the historic wool-sack—the insignia of judicial power surrounding the Chancellors of England, Walworth sat in that humble room, an apparently weak, powerless man. But his decrees and orders were as potent, as reverently obeyed as the mandates of sovereigns. And yet he trusted to the moral sense of the people alone for the execution of these decrees and orders. It was not the man—not Reuben H. Walworth, that was thus obeyed; it was the voice of justice speaking through him, her delegated minister—through him "setting a defense around the splendid mansion of wealth, the lowly hut of poverty;

repressing wrong, vindicating the right, and humbling the oppressor.

Near the end of the table, opposite the Chancellor, stood a finely formed man, with coarse, though intellectual features. A pile of law-books and two or three bundles of documents lay on the table before him. He was addressing the Chancellor in a legal argument. His clear, well modulated voice rendered his thoughts obvious ; his perfect acquaintance with legal authorities proved him a lawyer of experience, perfectly versed in all the tactics of legal warfare. This was John A. Collier, whose name is found on almost every page of the early reports of our State courts, and who was one of the eminent politicians that for many years stood at the head of the old Whig party.

A little below the center of the table a gentleman was seated, busily engaged in taking notes from Collier's argument. In height he was a little below the Chancellor, but his form was more robust. His long hair, tinged with gray, combed back from his broad, full forehead, fell almost to his shoulders. This was Daniel S. Dickinson, whose career as a lawyer, politician, and Senator in Congress, gives his name a prominent place in history.

Collier and Dickinson were engaged as opposing counsel on the argument of a case before the Chancellor, connected with one of the banks in Chenango county, which had long occupied the attention of the Court of Chancery.

But before concluding the description of this scene, a more minute sketch of the Chancellor on the bench and incidents in his court may not be out of place.

Chancellor Walworth was the great artizan of our equity system. In some sense he was the Bentham of America, without the fantastical theories and bold speculations which sometimes characterize the great English jurist. What Bentham did to remove defects in British jurisprudence, Walworth did in renovating and improving our system of equitable law. Before his day the Court of Chancery was a tribunal of ill-defined powers, of uncertain jurisdiction, entirely subservient to the English Court of Chancery in its procedure. With him equity was the soul and spirit of law, creating positive and defining rational law, "flexible in its nature, suited to the fortunes, cases and reciprocal obligations of men." Some of the fruits of his labors are his opinions forming the material for fourteen volumes of Chancery Reports and much of the contents of twenty-six volumes of Wendell and Denio's Reports. As has well been said, "Never, perhaps, were so many decisions made where so few were inaccurate as to facts, or erroneous in law."

One of the great cases which renders the name of Marshall immortal, is that of Marbury *v.* Madison. (1 Cranch, 137). Here, in a style remarkably clear, concise and forcible, he draws sharp lines between the co-ordinate departments of our government, defining the true principles underlying its foundation. There are several cases decided by Walworth in which the lines between the various state departments—between the equitable and strictly legal rights of individuals and their relations to the state—are as sharply and ably defined.

The single name of *intellect*, by which Plato so appropriately denominated Aristotle, may, with great pro-

priety, be applied to Chief Justice Marshall, for he was intellect in its purest and simplest form, "with a full mastery of all its various powers." His own original, thoughtful mind, patient sobriety of judgment and keen sense of justice, guided him in arriving at the real truth of the case more than the opinions and views drawn from precedent. In all the departments of legal learning there are no books in which there is so little authority cited as in his opinions. As we have said in another part of this work, when a case was argued and submitted to the court for its decision, Marshall, after carefully reflecting upon it, would write his decision, hand it to Judge Story saying. 'There, Story, that's the law in this case. Now go and find the authorities.' No man has ever lived who was more competent for this duty than Judge Story.

There is a resemblance in the mental organization of Marshall and Walworth, with this difference: the former was exquisitely alive to the charms of music—felt the inspiration of the poet—in early life wrote poetry with grace and a *naive* simplicity in harmony with his character; while the latter had little susceptibility to the pleasures of poetry. He would not have exchanged the Forum for the Vale of Tempe or the Garden of the Hesperides. But his mind, like Marshall's, was guided by equity and reasonable justice. Like Marshall, too, in writing his opinions he did not quote with much freedom from the ideas and decisions of others, and like Marshall, in early life his advantages for acquiring an education were limited, but he made the most of those he had, and was the artificer of his own fortune.

At the age of forty-six John Marshall was appointed Chief Justice of the United States by the elder Adams. Though he had been a member of Congress, had held other high and responsible positions, and was at the time Secretary of State, his qualifications for discharging the duties of his high judicial office were apparently limited. His legal studies were confined to one course of law lectures, which he attended while a soldier in the army of the revolution, stationed at Philadelphia, and he had practiced but three years. And thus, as he quaintly said of himself, "When I was appointed Chief Justice I knew very little about book-law." But immediately after his appointment he commenced a systematic course of legal studies, to which he applied himself with an inflexibility of purpose that subordinated all other objects to it, and with a success that enabled him, to use the somewhat exaggerated language of William Wirt, "to sit on the bench like a descended god."

When Walworth was appointed Chancellor he was thirty-six years old, had been member of Congress and a Circuit Judge. While he was at the bar he had a very extensive and responsible practice and stood at the head of a very distinguished legal firm. In his address to the bar on assuming the duties of Chancellor, with the frankness of Marshall, he spoke of his limited knowledge of Chancery law and his want of early advantages. It is customary for men entering on the discharge of important duties to speak of their own inability, and to throw themselves upon the generosity of those over whom they are to preside. Whatever supposed want of knowledge prompted Walworth to make this admission, it is certain, as has already been said, he

possessed rare qualification for an equity judge. It cannot, however, be said that he possessed those elements of greatness, that sagacious judgment, lofty dignity, natural courtesy and uniformity of temper, which exempts the Marshall from the Greek maxim—that "there never was yet a very great man without some very great folly annexed to him."

It must not be supposed that Reuben H. Walworth, as a magistrate, was without faults. With his singular capacity for administering the preventative and specific relief of equity to numerous parties and complicated interests, he blended many infirmities. His friends, however, insisted that his faults were merely the result of caprice, and not radical in his nature; while others insist that they were deep-seated, and permeated his whole judicial character. It has also been asserted that the tree which has produced such evil fruits must be corrupt. But it is certain that in private life Chancellor Walworth was a man of great purity of character.

As has been said of Sir Samuel Romilly, "he was a person of the most natural and simple manner and habits —one in whom the kindliest charities were blended with unrelaxed sincerity of purpose." * * *

One of his official faults was the habit of enforcing the rules of his court with illiberal exactness, sometimes with acrimony, especially in cases presented by young or inexperienced lawyers. This gave him the ill-will of that class of the profession.

As he always wrote his name with some ostentation, "R. Hyde Walworth," certain members of the junior bar, taking advantage of this, in retaliation for sharp raps received from him, gave him the name of "*Raw*

Hide Walworth." One morning, as he was taking his seat on the bench, at an equity term held at Albany, he discovered a paper having the appearance of a neatly folded document, with the words "*Raw Hide* Walworth" indorsed on the back of it. Taking it up with a humorous expression on his face, he handed it to the late Marcus T. Reynolds, who was standing near, remarking in a voice loud enough to be heard by all in the room, "Reynolds, see how much pains some one has taken to expose his ignorance in spelling." This was the last missile of the kind ever received.

The Chancellor had a disagreeable habit of interrupting counsel in the course of an argument, by asking questions that anticipated the point or points in the case. In this way he often rendered himself as formidable an opponent as the opposing counsel. Then again, he would propound a question, apparently quite out of the line of the case, but which his own active, discerning mind saw was virtually material and pertinent.

"An advocate before Chancellor Walworth," to use the language of Mr. Charles Edwards, "had to know all his declensions, or he was put by interruption quite of court, unless, like the late Mr. Abraham Van Vechten, of the Albany bar, he could manage to avoid responding categorically to any and all the equity judge's incessant propositions and suppositions."

"Suppose, Mr. Van Vechten," said he to that eminent lawyer, who was conducting an argument before him, "suppose that A. should ——"

"I am coming to that, your honor," said the lawyer, and the Chancellor was silenced for the time being.

In a few moments, however, he again interrupted the counsel.

"Supposing," said he, "that the receiver has applied the fund to ——"

"I am coming to that, your Honor," said Van Vechten.

"Why don't you come to it, then?"

"Because your Honor will not permit me to," was the reply.

"Go on, sir; go on."

Still the interruptions continued, but the counsel, by the constant repetition of "I am coming to that, your Honor," jumped every one of the Chancellor's hypothetical volunteer replications and bars, going through his brief and sitting down without ever "coming to that."

The mind of Walworth exhibited clearness of perception and sharpness of analysis—the polish and coldness of Parian marble, operating with geometrical exactness. It was too prosaic, literal and practical to be affected by the most impassioned eloquence. He listened to the loftiest flights, the boldest combinations, the most touching appeals of oratory, with the most stolid indifference of the man who, while listening to the thrilling incantations of "pale withered Hecate" casting her terrible night-gathered offerings into the mystic caldron, asked a friend sitting near him, "how much did that queer-looking kettle cost?"

It is related that an eminent counsellor, distinguished for his fervid eloquence, once appeared before Walworth in a case admitting some amplification—some drafts on the imagination. He opened the case in perfect good

taste, with a carefully prepared but brilliant exordium, which held the bar, suitors and spectators in breathless attention. Suddenly, like the jarring travesty of discordant notes in a beautiful, touching anthem, came the voice of the Chancellor, interrupting the speaker with the question :

"When was this bill filed ?"

The counsel gave a respectful answer, and continued his speech. He had proceeded but a few moments when the voice of Walworth again rang suddenly and harshly out, breaking the spell which the speaker had thrown over his audience.

"Why," he asked, "was Rawson not made a party here ?"

He was answered, and once more the speaker moved on in a flow of fascinating eloquence. But just as he had partly completed a climax of great beauty and effect, the question, "Why was Lambert made respondent here ?" came crashing from the bench, startling as the clangor of a gong. This was too much for the hitherto imperturbable speaker, and his eloquence withered away like "the stuff dreams are made of."

Notwithstanding all these imperfections, when he came to a decision in a case it usually squared with every principle of equity and justice. It has been well said, if his demeanor on the bench was sometimes open to criticism, it was that only which has been applied to kindred talents,—that he was prevented by his inconceivable rapidity of thought from patiently accompanying counsel in their slow approach to the important and decisive points in a cause, consequently he was held in high esteem by the bar and the public throughout

the nation, because his great qualities as an equity judge had by the lapse of time been made apparent behind all his errors.

When the Court of Chancery was about to close its last sitting—when its Chancellor, after presiding over it nearly twenty years, was about to retire to private life —a touching incident occurred, as pleasing to the bar as it was just to Walworth. Mr. Murray Hoffman, after closing an argument of great vigor and brilliancy, referred to the term about to close forever in a beautiful, expressive and vivid address, in which he briefly and justly reviewed the long career of the Chancellor on the bench of a court renowned wherever justice and equity were known and respected.

As the French in former times exhibited respect for their kings by crying "*Quand meme,*" so posterity will respect and venerate the name of New York's last Chancellor, notwithstanding his faults—notwithstanding unworthy descendants have tarnished the name of Walworth.

But to return to the scene in the court-room at Saratoga.

Several times during his argument Collier was interrupted by the Chancellor—on one occasion by his asking "why certain surplus funds were not applied to the extinguishment of a debt against the bank in New York?"

"I do not see how that would have affected the case, your Honor," said Collier.

"The good book, which, by the way, you are a stranger to, Collier, says there are those who, having

eyes, see not, and ears, hear not," said Dickinson, busily arranging his notes.

"You are always quoting Scripture, Dickinson, and you quote poor enough, but if you could quote law half as well, the bar would not always be thinking that a fair camp-meeting preacher had been spoiled in making an indifferent lawyer," said Collier.

"How cross you are to-day, John! Since you cannot stand a joke, you should never try your wit, for it isn't sensible; it trips, and you are always breaking your own shins over it," said Dickinson.

A rap from the bench ended this facetious departure, and the counsel proceeded. As it was highly necessary for the young lawyer to leave for home that day, he was fearful the lawyers would not give him an opportunity of being heard. At length Collier closed, but before the young man could address the court Dickinson was on his feet, and had commenced his argument. The only alternative of the would-be solicitor was to interrupt the counsel, or remain until the next day. He therefore determined to adopt the former course, and without further hesitation said:

"Mr. Dickinson, will you be kind enough to suspend your argument long enough for me to take the solicitor's oath? My great haste to return home is my apology for asking the favor."

Another sharp rap from the Chancellor's gavel evinced his displeasure at the interruption.

"Proceed, Mr. Dickinson," said he, "the young man should not interrupt counsel; there is no apology for that. Wait, young man, until the conclusion of the argument. Go on, Mr. Dickinson."

"Oh, no, your Honor; I will cheerfully suspend for a matter so very important. The State of New York needs just one more Solicitor in Chancery, and I think this young man ought to be the one. So, take the oath, sir, and remember it; I'll wait for you," said Dickinson.

"I am obliged to you, sir," said the young man. The Chancellor then proceeded to administer the oath to him. That done, he signed the roll and was a solicitor. "Now, Mr. Solicitor," said Dickinson, "remember you are a solicitor by my permission, so don't beat me in the first lawsuit in which we are opposed."

"I shall never forget your courtesy, sir. Life has many changes and I may meet you again some time, though I hope, for my own sake, not as an opponent in any case I may have," said the newly-made solicitor, as he was leaving the court-room.

Years sped away. Amid the ever-changing scenes of life, ardent labor and many trials—sometimes exhilarated with success, then depressed with defeat, the young lawyer made his way in his profession. He never met Mansfield Walworth again, who, with superior advantages, powerful influences—with his father's fame radiated upon him—with high aspirations—some ability, but "warped to wrong"—an instrument strangely attuned, jarring with wild contrasts—flinging off some melodies, he entered life to struggle—to fail—to greatly err, and finally to die, the victim of a dark, unnatural crime.

In the autumn of 1846, the young solicitor was engaged in the argument of a case before the Chancellor at Albany, Mr. Dickinson was his opponent. When the

arguments were concluded, the former, approaching his distinguished antagonist, said :

"You do not remember me, Mr. Dickinson, though I am here by your permission."

"By my permission ?"

"Yes, sir ; by your permission."

"Do you not remember that three years ago, while yourself and Mr. Collier were engaged in the argument of a case before the Chancellor at Saratoga, a young man asked you to suspend your argument long enough to permit him to take the solicitor's oath?

"Certainly I do. Are you the person ? That much-needed solicitor."

"I am ; and I have never forgotten your courtesy, though it was slightly ironical."

"You managed the matter of your admission exceedingly well, and from what I have heard of you I made no mistake in deciding that you should be the next solicitor," said Mr. Dickinson.

At last there came a time when the names of Walworth and Dickinson were written on the marble beneath which their ashes repose. But the young student, "the much-needed solicitor," is still actively engaged with the duties of a profession to which he is ardently attached. Many years of toil and care—many pleasing associations with his brethren of that profession—the unutterable memories of the lamented dead, have deepened that attachment. In the midst of "that animation of contest," known only to the bar, he has found time to twine an humble wreath to their memory—to gather, in his own Bench and Bar, the fast-fading reminiscences of those who, unsullied and gifted in tho

discharge of high and sacred duties adorned the bar, and were venerated on the bench ; and thus he has lived to weave a votive offering to the memory of all who witnessed the oath that made him a solicitor in the Old Court of Chancery.

MARTIN VAN BUREN.

His Student and Law Partner, Benjamin F. Butler—Their Career at the Bar—Their Compeers and their Enemies—Their Triumphs at the Bar—The Founders of the Democratic Party.

AMONG the eminent friends of Martin Van Buren, none were more conspicuous than Benjamin F. Butler. In many respects both Van Buren and Butler may be called epoch men—persons whose minds, energies, opinions, political and professional, are indelibly impressed upon the history of the long and interesting period in which they lived.

As was said of Chief Justice Rutledge, whose career at the bar resembled Van Buren's : "He was employed in the most difficult causes, and retained with the largest fees given in his day. The client in whose service he engaged was supposed to be in a fair way of gaining his cause. His qualities as a lawyer and advocate were of a character to ensure success. He had a penetrating judgment, and great quickness of perception ; intuitively seizing upon the strong points of a case, presenting them to the court and jury with remarkable energy, eloquence and success."

He began the study of law at the early age of fourteen, and his professional learning was based on a systematic course of seven years' study of law and the classics.

As he was dependent on his own resources, he obtained the means of support by teaching school in winter, until his eighteenth year, when he commenced practice in justices' courts with great success.

His preceptor was Francis Sylvester, an eminent lawyer, who took great pains with his student. After Van Buren had gained some experience in justices' courts, he was engaged to try a case against Sylvester himself. Not the least daunted, the student came forward to the table where the justice and his preceptor sat. The moment the latter saw him he seized him, lifted him on to the table, exclaiming: "Gentlemen of the jury! here is little Mat, come to beat his master!" "You can handle me much easier than you can the law, that I shall show the court and jury, Mr. Sylvester," said Van Buren. The case proceeded to trial, and, sure enough, little Mat won his case.

It was once said of Chalmers, the youth of Scotland, some hundred years hence, will not be putting any such question as this: "Thomas Chalmers!—who was he?" for, from duke to laird, from the learned and the gifted, to the religious cottager of Scotland's remotest glens, when generation after generation has passed away, his memory will be freshly preserved, and deeply reverenced. So may we say that after many ages have vanished, the lawyer, the legist, the codifier, and the statesman, will not put the question: Benjamin F. Butler!—who was he? The Revised Statutes of the State of New York, in part the offspring of his genius and learning—the reports of adjudicated cases—the records of cabinet ministers—the recorded opinions of the Attorney-Generals of the nation—speeches imbued

with Tuscan elegance and strength, will ever tell posterity who Benjamin F. Butler was, and the State of New York will forget him when she forgets the great historic lights of her jurisprudence, the founders of her legal system, and her eminent statesmen. As to the exact place he should be assigned among these, there may be room for a difference of opinion, for light which too partial friendship, and the shadows which too implacable enmity cast upon his character, still linger about it.

It is not pretended that in pure intelligence, genius, eloquence, strength of intellect, or in any single element of moral or mental excellence, he surpassed all the gifted men of his times. But "taken altogether, mind, heart, visible bearing, andvariety of talents, he naturally took a prominent position in any assemblage of distinguished persons in which it was his fortune to be placed." The admitted merits of others do not detract from his, or render them ambiguous. He was often in the society of men who surpassed him in ability—or at least who had the reputation of surpassing him; but they never dislodged him, in the view of the public, from his own eminent position—did not obscure those qualities that gave him this position. It is said of Goldsmith that he had a natural affinity for the society of the learned and distinguished men, that long before he reached that pedestal of fame from which posterity views him, his associates were Johnson, Foot, Garrick, Churchill, Coleman, Burke and Boswell—scholars, writers, poets, orators and wits—names resplendent in the history of English literature. So with Butler; while yet a student at Hudson he attracted the attention and gained the

friendship of some of the most eminent men in the State.

"He was born at Kinderhook Landing, December 17, 1795. His father was a merchant in moderate circumstances. His early years were passed in attending a common school, and aiding his father in his store. While thus engaged he became a favorite of a Presbyterian clergyman in the neighborhood. He was a man eminent for his piety, high-toned, generous, scholarly, and endowed with those qualities naturally attractive to young and ardent minds. This good man, duly appreciating the constitution and susceptibilities of Butler's nature, inscribed upon his mind traces of light and beauty, of religion and virtue, which were never erased by his faults, however numerous. From this clergyman he received his first knowledge of the classics and of literature.

"When young Butler attained his fourteenth year, he was sent to Hudson Academy, where he soon gained high standing as a scholar, and where he prepared to enter college. A few years previous to his entrance into Hudson Academy, a young lawyer, who had practiced a short time in a small village in Columbia county, received the appointment of Surrogate and removed to Hudson, where he discharged in an acceptable manner the duties of his office and of his profession. He had gained a high reputation for legal and rhetorical talents at a bar where W. W. Van Ness, Elisha Williams, Jacob Van Rensselaer, and others as distinguished as they, appeared. Political dissension was then high and bitter, the uncompromising acerbity, the domineering ambition, the aristocratic tendencies of the Federal leaders, were

opposed by the young Democratic party, under Jefferson, its great intellectual light, the source of its rational and active elements so signally triumphant in the great contest of 1800.

"The young lawyer was a Democrat, and as the eminent persons we have named were distinguished at home and abroad as Federal leaders of extended influence, he was compelled to contend in the political and legal arena against men so powerful. For him, therefore, the struggle was trying and his labor intense. He had no powerful friends, no wealth to aid him. But he belonged to the common people; his sympathies were with them. He was their representative, their leader. Like Bolingbroke, he seemed formed by nature to delight in struggling with opposition, and, indefatigable in raising himself enemies, to exhibit his power in subduing them. Like this gifted and erratic Englishman, 'his vivacity was always awake, his apprehension quick, his wit sharp and ready; his subtlety in thinking and reasoning was profound, and all these talents were adorned by an elocution that was irresistible.'

"With these advantages, and the most unwearied exercise of all his abilities, he became a formidable, successful, and detested opponent of the Federal party. Butler had been at Hudson two months, when the young lawyer was elected a State Senator against a distinguished Federal politician, and against a powerful opposition. Among those who largely aided in his election, was the father of young Butler; therefore the Senator elect extended the gratitude he owed the father into a warm friendship for the son, and he often invited the latter to his office and house,—encouraged and di-

rected him in his studies, beholding with pleasure the rapid progress of the young student. When finally his academic course was ended, he became a student at law in the office of the rising young lawyer. Step by step the young advocate ascended to distinction and fame until he attained the highest honors within the gift of the great republic. That name is Martin Van Buren."

"Young Butler closely followed his footsteps, though he did not ascend so high up the ladder of fame as his preceptor."

"In the Spring of 1816, Van Buren removed to Albany, and entered at once upon an extraordinary professional and political career. He first took his seat in the State Senate in January, 1813. His dress and personal appearance were subjects of a satirical attack by his enemies. He was dressed in a green coat, buff breeches, white-topped boots, and carried in his right hand a light ivory-headed cane. These, with his foppish bearing, caused him to appear more like a sporting man than a Senator. Being slight in form and small in stature, his person was sneered it. When, in 1845, he was a successful candidate for Attorney-General, a leading Federal journal spoke of him as follows: 'How is it possible that this dapper little fellow, whose mind is as contracted as his body is small, and who appears more like Sir Fripling Fop than a lawyer, should have the impudence to aspire to the position of Attorney-General, especially as the opponent of a civilian so distinguished and learned as is Mr. Van Vechten; but it is another case of vaulting ambition o'erleaping itself.'"

"Notwithstanding the fierce and unrelenting opposition of his enemies Van Buren was appointed Attorney-

General in place of the accomplished and scholarly Hildreth, who had resigned that office."

Those who watched the career of Martin Van Buren, and listened to his persuasive, often magnetic eloquence, were reminded of Boswell's unique description of a celebrated English orator, while addressing the electors of York from the hustings. 'It was,' says Boswell, 'what seemed a mere shrimp, mount the rostrum, and I wondered what the little creature intended to do. Presently he began to speak ; the first words he uttered caught my attention; his language, his look, his actions all harmonized and attracted attention, and as I listened, he grew and grew, until the shrimp became a whale.' With such talents it is not strange Martin Van Buren, even against the most bitter opposition, became *primus inter illustres*—the prince of the Senate."

It was the fortune of Martin Van Buren to encounter the gigantic intellect and extensive popularity of De Witt Clinton. It is true that when Van Buren, in 1812, entered the State Senate, he strongly supported Clinton, then a candidate for President of the United States, against James Madison. At that time Presidential Electors were appointed by the Legislature by joint ballot, and the State of New York, ever true to Clinton, gave him her vote for the presidency, as did a large number of other States ; but Mr. Madison was elected.

In the varied and shifting scenes of the political drama that followed, Van Buren united his fortunes to the most persuasive, popular, and successful politician of that day, Daniel D. Tompkins, and from that time to the close of Clinton's life he was his political antago-

nist. A powerful party, composed of many influential men in the State, with Van Buren, Tompkins and General Erastus Root at its head, was soon formed. It was the substructure of the great Democratic party that subsequently ruled the State so many years. The skill and tact with which these men acted, with the splendid talents of Benjamin F. Butler, who joined them at a later period,—the facility with which they moulded the minds of the people to their purposes—the prudence which they gave to their energetic ambition, were leading them to irresistible influence and power.

"There was then but one man in the State that could hold them in check, that could 'neutralize their power.' This was De Witt Clinton. If we may be allowed the expression, his influence with the people was stupendous. Occasionally his enemies were enabled to gain a momentary triumph over him, as they did in the Legislature of 1824, when, by a concurrent resolution, he was suddenly removed from the office of Canal Commissioner. Like Galileo, Columbus, Fulton and Morse, his history presents the presence of great predominant ideas, the realization of which promoted the happiness and prosperity of his country, and like all public benefactors, who find that the task of benefiting society is a thankless one, he was compelled to contend against ignorance, jealousy, cupidity, envy, hatred and malice. But his hold upon the affections of the people was so strong, the rapidity of his conceptions; his inexhaustible energy; his prompt decision, that never suffered a moment's pause between purpose and execution, sustained by an intellect as powerful as it was active; a presence of mind which amidst sudden reverses on the

very brink of ruin devised the means of escape, and a courage that never faltered, rendered him invulnerable, with few exceptions, in a contest that continued from the day he entered public life down to the 28th of February, 1828, when his death, a national calamity, dissolved the great power which held in check the ambitious schemes of Martin Van Buren and Benjamin F. Butler, opening the way to the advancement of the former to the chief magistracy of the republic."

When Van Buren removed from Hudson to Albany, Butler accompanied him, continuing with him until he was called to the bar, which event took place in 1817. Immediately after his admission, he became a partner of Mr. Van Buren, and the firm was soon considered one of the most distinguished in the State, not only for its influence in the legal world, but for its controlling power in politics. It continued to exist until 1827, when Mr. Van Buren was elected a Senator in Congress, and when, in a measure, he withdrew from the legal profession, devoting himself ever after to the statesman-like career he had marked out for himself. That his opponents detected faults in that career cannot be denied, for with all his strength of character, he possessed and practiced those unscrupulous arts without which political power is rarely attained. One of the great secrets of his success was the discernment he exercised in the selection of his friends and allies. In this he excelled the subtlety of Richelieu, Buckingham and Halifax. When Van Buren withdrew from the legal profession, he left the immense business of Van Buren and Butler to be closed up by the latter. This brought the latter, to the front rank of the legal profession in the State.

"He distinguished himself as the assistant of Aaron Burr in the trial of the celebrated Medcef-Eden case, which engaged the attention of the State courts so many years that it became as familiar to the bar as that of Jarndyce *v.* Jarndyce did to English lawyers. It was a case full of romantic interest, commenced by Burr after his return from Europe, when reduced almost to penury, but its final result and the manner in which it was conducted exhibited the splendid legal talents of that singular man, and the deep learning of his assistant.

"The first case which Mr. Butler argued before the general term of the supreme court was in 1820, when he argued the celebrated case of the People *v.* Foot. His opponent was Thos. J. Oakley, whose unsurpassed legal abilities adorned not only the bar of the State, but of the nation. His first appearance in the Court for the Correction of Errors was in the cause of Manahen *v.* Gibson. Soon after this he argued the leading cases of Troup *v.* Smith and Morton *v.* Crogan before that court. In these cases he was associated with Samuel A. Talcott, ever a warm personal friend of Van Buren and Butler. Mr. Talcott possessed a powerful intellect—an intellect that illumined everything it touched; his instinctive quickness in seizing the points in a case; the philosophical precision with which he demonstrated his arguments; his majestic, yet natural, easy eloquence, replete with learning, rendered his speeches at the bar vividly beautiful in their severe logic, and at times impressive and overwhelming in the splendor of their rhetoric. When the brilliant career of Thomas Addis Emmett was suddenly terminated by death, he was preparing to argue a case before the Supreme Court of the

United States that created intense interest throughout the nation. Mr. Talcott was, by universal consent, summoned to conduct the case, as the successor of the great Irish lawyer. His argument was unrivalled, though he was opposed by Daniel Webster, associated with two of the ablest lawyers in the nation."

"One of the earliest and warmest friends of Butler was William L. Marcy. When that illustrious statesman resigned his seat in the United States Senate it was his earnest desire that Butler should be his successor. With such influence that dignified position could have been easily reached by him; but he declined the distinguished honor, adhering rigidly to a determination which he early adopted, "never to accept any office which would withdraw him from his professional studies and pursuits." Soon after this he was appointed a commissioner, with Theodore Frelinghuysen, of New Jersey, to settle the bounday line betweeen that State and the State of New York."

In the year 1825 the Legislature passed an act appointing Mr. Butler, John Duer and Henry Wheaton, commissioners to revise the statute laws of the State. But Mr. Wheaton was soon after appointed by the President of the United States *charge d'affaires* to the court of Berlin, and John C. Spencer, by a unanimous vote, was elected in his place. It has well been said that the selection of Mr. Butler, who was then comparatively young, carried with it evidence of the high estimation in which he was held by the people of the State.

Early in the year 1833 Roger B. Taney, then attorney-general of the United States, was promoted to the

office of chief justice of the Supreme Court of the nation, and Mr. Butler was immediately, through the influence of Mr. Van Buren, appointed attorney-general in his place. This appointment was exceedingly gratifying to all parties. A few days before Mr. Butler's departure to Washington to enter upon the duties of his office, the citizens of Albany, without distinction of party, assembled and expressed their regard for his virtues as a citizen, and their admiration for his talents as a lawyer. Many of the most eminent men in the State participated in the proceedings of the meeting. In October, 1836, while discharging his duties as attorney-general, he was appointed secretary of war, in the cabinet of President Jackson—a position which he held until the 4th of March, 1837. On that day his early friend and benefactor, Mr. Van Buren, entered upon the duties of his administration as President of the Republic. It was his desire that Mr. Butler should continue in the position of secretary of war, but he declined, accepting the office of attorney-general, the duties of which he discharged until April, 1838, when he resigned, and Felix Grundy, of Tennessee, was appointed in his place. The opinions pronounced by Mr. Butler while attorney-general, are regarded as dignified state papers, bearing the impress of an enlightened and accomplished mind, the intellect of a profound lawyer. After resigning the office of attorney-general he returned to his native State and adopted the practice of his profession, in which he continued without interruption until the close of his life. The only office he accepted was that of United States district-attorney for the southern district of New York, which

he discharged for a short time, under the administration of Mr. Polk.

Mr. Butler's professional life extended through the long period of forty-one years, a period the most interesting and important in the legal history of the State. The student, in pursuing his studies, is surprised to find in all his books such various memoranda of his professional labors, while our reports are filled with his arguments on the law questions that occupied the courts during his time, exhibiting the extent of his studies in all branches of legal learning. Butler continued to devote his energies to his profession so intensely that his health declined, and in the autumn of 1868 he was prevailed upon by his friends to relinquish his labors and visit Europe. But disease has made such inroads upon his constitution that he was past recovery, and he died at Paris, November 8th, 1868.

After Mr. Van Buren retired to private life the friendly relations that commenced in the days of their young ambition continued. Friends and associates who had united their fortunes with them had seen the last of earth; schemes of great ambition had been realized, their fading glories tested. How many full-blown hopes of political position; how much transient distinction and ephemeral elevation; how much bartering all that is lofty, pure and generous, for some "bad eminence," had they witnessed in their day, and at last all was ended! But scenes like these have continued. Others like them have and will press on to their destiny, to success, to failure—and all, or most of them, to oblivion!

RUFUS CHOATE AT THE BAR.

Relations with His Client—As a Criminal Lawyer—Can an Advocate Consistently with Honesty Defend a Person He Knows to be Guilty—The Answer—Choate's Defense of Tirrell—Its Analogy to Ogden Hoffman's Great Defense of Richard P. Robinson for the Murder of Helen Jewett—His Wit and Pleasantry at the Bar—Characteristic Anecdote—His Personal Appearance.

It has been said that of all American lawyers Rufus Choate was the genius of the bar, and we believe the remark to be true, for, in every sense of the word, all his ambition centered in his profession. "With all its amplest treasures of knowledge at his command, by the exercise of a power of application not usually attributed to genius, by habits of careful and laborious study, in which no man surpassed and few equaled him, manifesting a real and most earnest sympathy in every case intrusted to him, to the smallest indifferently with the largest, by a sort of resolute instinct of nature, but which always co-operated with principle and was sustained by it, thus, always doing justice to his client, himself and the occasion, and never found even partially unprepared; but, before a single judge, with no audience, upon a question claiming little public interest, as learned, as eloquent, as choice, copious and accurate in language, and equally as fervent in business as if surrounded by an admiring crowd, so often kindled by the thrilling utterance of his lips, for he was still there,

doing his duty—his vigor, his fire, his zeal, ever the same—so that it was the true spirit of the man within which led him on and made him true to all time and place, true to all clients, high or low, rich or poor, and thus able to turn time, occasion, circumstance, all things, to the immediate and overpowering purpose which impelled him, as few men are impelled, to do with his might whatever his hands found to do."

Then again there was no man who infused such entire confidence into his clients as Mr. Choate, and he was equally fortunate in securing the confidence of judges and jurors.

"There is no such evidence in the case as that," said one juror to another, while consulting in a case that had just been submitted to them, in which Mr. Choate had made the argument for the plaintiff. "You are only telling what Mr. Choate said, not what any witness said, and I tell you again that is not testimony, it is only the talk of a lawyer for his client."

"Well, I don't care if it is only what Mr. Choate said; he is always candid, always tells the truth, never knew him to do otherwise; and then, did you not see how the judge watched every word he said? I tell you I had rather take what Mr. Choate says than that which is dragged from an unwilling witness or given by a too willing one," was the reply.

It seems that all the members of the panel concurred with the last juror; for Choate's client, although his case was somewhat doubtful, obtained a verdict.

Few men had a higher sense of professional honor than Mr. Choate. He believed the American bar stood pre-eminent over the bar of any other nation, and his

ideas of the office and duties of an advocate were very exalted. With the illustrious French lawyer, D'Aguesseau, he believed that "the order of advocates is as ancient as the office of the judge, as noble as virtue, as necessary as justice."

It is said that during the progress of a trial, though intently watchful of all the proceedings, he abounded in good nature and courtesy. "If his wit and pleasantness in the court room," said one of the most eminent of his profession, "could be gathered up, they would be unsurpassed in all the annals of the law, yet he was always dignified, frequently impressive. To witnesses he was unfailingly courteous, seldom severe, even with the most reluctant, but drawing from them the evidence by the skill of his examination. In cross-examining, he knew by instinct when a witness testified to what he knew, or to only what he *thought* he knew. To the bench he was remarkable for deference in manner, quietness, felicity and precision in language."

Celebrated advocates at the bar have been distinguished by some remarkable peculiarity, trait or habit; thus, Thomas Addis Emmett always in his exordium would hold a pen in one hand and slowly tear the feathers from its side till all were torn away; he would then drop the pen and enter ardently into his argument with an eloquence and zeal that enchained all hearers.

Webster was accustomed to place his left hand on a table or desk before him, slightly moving his fingers like a person playing on the keys of an instrument, until warmed with his subject, he launched forth his commanding and powerful rhetoric and logic. Reverdy Johnson always began his argument with his left arm rest-

ing across the small of his back. William Wirt always opened his arguments to the court or jury with his right hand holding a partly opened law-book, one end resting on the table before him. Mr. Choate's manner at the bar has been thus described: "He stood erect and quiet, making no gesture except a slight movement of the right hand from the wrist; this position was unchanged except when it became necessary to obtain a book, consult an authority or legal document. He would often speak for over an hour, in a low, clear, audible voice, with a felicity of language, logical precision, a succinctness of statement, and gradually advancing in warmth of feeling until his motions and gestures became more and more vehement, then the sweeps of his arm, the motion of his tremulous hand, the fascination of his eyes, and the charm of his language seemed to come spontaneous and irresistible."

"Law," he used to say, "is an art as well as a science. Whilst it has its foundation in a broad and comprehensive morality, and in profound and exact science, to be adapted to actual use in controlling and regulating the concerns of social life and business life, it must have its artistic skill which can only be acquired by habitual practice in courts of justice." "The bench and the bar," said the Hon. Benjamin R. Curtis, "are mutually dependent on each other for that co-operation which is essential to the steady, prompt and successful distribution of justice. Without the support of an able, learned, industrious bar, it is not too much to say that no bench in this country can sustain itself, and its most strenuous exertions can result only in a halting and uncertain course of justice. Without a learned, patient, just and courageous bench, there will not, for any long

time, continue to be a bar fitted for its high and difficult duties."

It is not saying too much, that in all countries where lawyers are known their example and influence as a class, have been, in general, favorable to sound morals, as well as to the advance of civil and religion freedom.

Mr. Choate's practice was larger and more extended than that of any other lawyer of his times. Much of his time was devoted to the argument of causes before the United States Supreme Court at Washington, although, when time permitted, he was engaged in the trial of causes in all courts. He was frequently engaged in criminal *causes célebre*. Though criminal law practice really had little attraction for him, yet once engaged in a great criminal case he devoted all his great intellectual powers, and all his learning to bring it, as he usually did, to a successful termination, even though public opinion was strongly against his client.

Mr. Choate had a conscientious regard for the real right and justice of a case. He would never undertake the defense of a criminal whom he believed to be guilty; and yet, he did occasionally successfully defend criminals about whose guilt there could be no doubt. This occurred in the Tirrell case; but in all such cases he believed his client innocent. If, for any reason, after he became fairly engaged in a case, he had doubts of his client's innocence, still with rigid fealty he continued the defense.

Like Lord Brougham, he believed that no discovery of corruption or turpitude on the part of his once recognized client can justify a lawyer in ceasing to represent his interests as long as he is entitled to a fair and impartial trial.

He used the utmost caution in accepting retainers in criminal and in all other cases, exhausting every effort to ascertain the real right of the case presented to him.

Like the learned and venerated Nestor of the western New York bar, Vincent Mathews, he often resorted to subterfuge in his efforts to ascertain the guilt or innocence of those who sought his services. He used to relate with infinite pleasure the keen artifice which Mathews once used to detect the guilt of a man who sought to engage him to conduct his defense on his trial for murder. The man had been indicted for killing his wife by poison. After cautiously drawing from the man his relation of the case, putting to him several ingenious questions, the astute lawyer said :

"The circumstances are against you, and I dislike very much to undertake your defense ; but if I believed you innocent, I would not hesitate."

The man asserted his innocence with great vehemence, but his words did not quite convince the sagacious counselor.

"I have two ways of defending a man charged with crime. If I think him innocent, I trust very much to that, and the difficulty of fabricating evidence that will convict. But, if I think him guilty, if I undertake the case at all, I make every effort in my power, and leave nothing undone which may tend to save him. Now, sir, which course shall I pursue in your case ?" said General Mathews, fixing his eye keenly upon the man.

"I—I—think that in my case you had better not leave anything undone," said he.

This was sufficient ; the man found other counsel.

Theodore Bacon, distinguished equally as a lawyer and a thoughtful, concise and elegant writer, in a recent paper read before the American Social Science Association on "Professional Ethics," said :

"The popular mind, in considering, as it delights in doing, the duties and the faults of the legal profession, dwells most frequently and most severely upon two cases, which give little concern to conscientious lawyers. The first is the problem of defending criminals known to be guilty. The fallacy involved in the prevalent objection is in the notion that the interest of morality demands always the punishment of bad men. The error is a grave one. The interest of morality and of social order demands, above all things, that a bad man shall *not* be punished unless he has violated some law ; and even that a known violator of the law shall not be punished except by the forms of law. Those established and known laws, those fixed rules of procedure, are all that distinguish the institutions of civilization from the savage cruelty of an oriental autocracy or the blind fury of a western lynching mob. Against any departure from them or disregard of them, every bill of rights sets safeguards in its prohibition of *ex post facto* laws and bills of attainder. And every lawyer who interposes against an eager prosecutor or a passionate jury the shield of a strictly legal defense, declaring, you shall not hang or imprison this man, be he guilty or not guilty, until by the established course of procedure, by competent legal evidence, you have proved that he has offended against a definite provision of law, and that the precise provision which you have charged him with violating, is defending not so much the trembling wretch at the bar,

as society itself, and the innocent man who may to-morrow be driven by clamor to crucifixion. If, indeed, in the excitement of controversy, he quibbles with words, or perverts evidence, he becomes himself an offender; but his offense is not that he defends a guilty man, but that he does that which would not be honest if done on behalf of an innocent man.

"Not very much more frequent, in actual practice, is the supposititious difficulty created by knowing one's client in a civil cause to be in the wrong. It can seldom happen to any honorable lawyer to know his client to be in the wrong. If the counsel is frankly informed by A., 'I have swindled B., and want you to help me keep the fruits of my fraud,' either the counsel is an unconscionable knave, whose services are, for that reason, invoked by A., or he dismisses the proposing client so expeditiously that the relation has no opportunity to exist between them. Every lawyer, no doubt, becomes, at times, the adviser and assistant of a villain; but, if he be an honest one, he promotes his villainy as innocently as the grocer who sells the supplies that keep him alive, or even the locomotive that draws him on his way to accomplish his designs. Many a lawyer who has meant to keep clean hands and a pure heart, can look back upon this or that completed litigation, and see that his client was both legally and morally in the wrong; but it is seldom that the incessant and fervent assurances of the client, the proofs and arguments which, all upon one side, he arrays before his counsel, have failed to keep him convinced, from beginning to end, that he must be in the right. A venerable jurist, of the finest sense of honor and the purest integrity, said to me, after fifty

years of the most laborious professional life, that he had never but once thought his client in the wrong; yet, to my positive knowledge, he had advocated the causes of some thorough scoundrels.

"It must sometimes happen, however, in every long career, that one entering upon a litigation in enthusiastic sympathy with his client, shall, with the progressive development of the case, find his ardor chilled by dishonoring disclosures. Even then it may well appear that his continued service will not be the active promotion of wrong; and if that is so, the only effect of the revelation may be that he will render no longer a sympathetic, but merely a faithful service."

One of the most important and interesting cases in legal history is that of Albert J. Tirrell, in which Mr. Choate appeared for the defendant, who was charged with the atrocious murder of Maria Bickford. The circumstances pointed so strongly to the guilt of Tirrell that they brought upon him the condemnation of the public. Nevertheless, after a full and searching interview with Tirrell, Choate believed him innocent, and entered into his defense with inflexible ardor, subordinating everything else to this belief and to sympathy for him. Perhaps no advocate in defending a criminal ever used finer drawn logic, ever established a more skillful hypothesis, or ever interposed a more powerful and more brilliant defense than that of Mr. Choate in this case. Never did an advocate exhibit greater skill in crushing the theory of a public prosecutor touching the guilt of the accused; never was there such ingenious blending of apparently discordant circumstances into a beautiful theory of presumptive innocence.

The facts in the case we take as reported, which are as follows:

"Between four and five o'clock on Monday morning, October 27th, 1845, a young and beautiful woman named Maria Bickford was found dead in a house of ill-fame in Boston, kept by one Joel Lawrence. Albert J. Tirrell, a person of respectable family and connections, but of vicious life, already under indictment for adultery, was known to have been with her on the previous afternoon and late in the evening, the doors of the house having been locked for the night. He had long been a paramour of hers. On the morning spoken of, several inmates of the house were early roused by a cry coming apparently from the room occupied by these persons, followed by a sound as of a heavy body falling on the floor. Soon afterward some one was heard going down stairs, making an indistinct noise as if stifled by smoke; and almost immediately those in the house were alarmed by the smell and appearance of fire. After the fire was extinguished, which was done by the help of a fireman and a neighbor, the body of Mrs. Bickford was found on the floor of the room she had occupied, and where the fire principally was, at some distance from the bed, her throat cut to the bone from ear to ear; her body much burnt; a considerable pool of blood upon the bed; a bowl upon a wash-stand in the corner of the room, with water in it, thick with blood; marks of blood upon the wash-stand, and the lamp on the mantel-piece; the bed-clothes piled up in various places in the room and in the entry, and partly consumed; a bloody razor near the body; also, some stockings, a cravat, and a cane, belonging to Tirrell. Beside this, a fire had been kindled in an ad-

joining room which was not occupied that night. A woman in the next house, separated from Lawrence's by a brick partition, was waked that morning by a screech as from a grown child; but on listening, heard the voice of a woman; then she heard a strangling noise, and afterward a fall, and then a louder noise.

"It was also in evidence that Tirrell had called in haste, very early on that Monday morning, at a livery-stable near Bowdoin Square, saying that 'he had got into trouble; that somebody had come into his room and tried to murder him, and he wanted a vehicle and driver to take him out of town.' These were furnished, and he was driven to Weymouth. He also had called between four and five o'clock at the house of one Head, in Alden Court, not far from the livery-stable, and asked for some clothes which he had left there, saying that he was going to Weymouth. The officers in search of him on the same day did not find him; but some months afterward he was arrested in New Orleans, and brought to Boston for trial."

These circumstances, as we have already said, seemed to form a cable of evidence strong enough to drag the prisoner to the scaffold, but Rufus Choate had the courage, the skill, the sharp analysis sufficient to disintegrate it and render it powerless.

He threw doubts upon the testimony of the government, as the evidence of persons of vile character, by subtly dissecting what seemed certain, and then demonstrating its consistency by a theory of innocence—by artful evidence tending to show that the death of the woman was produced by her own hand or by some person other than the prisoner. As has well been said,

"this defense was so singular and audacious that it seemed almost to paralyze the attorney-general." After Choate had concluded his plausible, apparently candid, and yet "audacious" opening, it was curious to watch its effect upon public sentiment; there was never anything like it; there was no living man but he who had the courage, the skill, the energy and determination to grapple with the defense which he had foreshadowed, one of the features of which was the chronic somnambulism of the accused. As soon as he had concluded his opening, notwithstanding the general belief of Tirrell's guilt, the bench, the bar and the spectators began to think that Tirrell could never be convicted.

It appeared in the evidence for the defense "that he was subject from his youth to somnambulism; and that while in this state he made strange noises—a sort of groan or screech—loud and distressing; that he frequently rose and walked in his sleep; uttering words evidently prompted by dreams; and that once he pulled a companion with whom he was sleeping out of bed, stood over him, crying out, 'Start that leader! start that leader, or I'll cut his throat!' and then rushed to the door as if to take a knife that had been placed over the latch as a fastener; that on the morning of the alleged murder, when he went to Head's house, he appeared so strangely that he frightened those who saw him, and Head took hold of him and shook him, which seemed to waken him from a kind of stupor, and he exclaimed, as if frightened, 'Sam, how came I here?' It was also proved that when informed at Weymouth of the murder and that he was charged with committing it, that he said he would go to Boston and deliver himself up,

but was dissuaded by his brother-in-law, who furnished him money to take him to Montreal."

It was further proved that Mrs. Bickford, though beautiful, accomplished and fascinating, was inclined to intemperance, was passionate and wicked, often threatening to take her own life; that she was in the habit of having a razor with her for the purpose of shaving her forehead to make it high; and had bought a dirk, keeping it concealed in her room. Physicians of the highest respectability testified that the wound in the neck of the victim might have been inflicted by herself; that extraordinary convulsions may be made after much blood has left the body, especially if some remains in the head; that from the nature of the instrument and the physical ability of the deceased, the death might have been suicide; that the prisoner evidently appeared to be a somnambulist; that in this somnambulic state a person can dress himself, can easily and consistently commit murder, set the house on fire and run into the street." These were the strong points on which Mr. Choate founded his magnificent argument to the jury which proved him one of the greatest masters of reason, of dialectical ability, and capable of the clearest display of facts and principles, analogies, or tendencies applicable to any case he undertook to conduct. He insisted that the prosecution had failed to show any motive that prompted Tirrell to the commission of the deed; that the evidence was not incompatible to the theory of self-murder; that for anything that appeared in the testimony a third party might, and probably did commit the murder; but if committed by the prisoner, it was done when reason, reflection and design were enchained by

a powerful sleep which did not suspend his physical powers.

It is greatly to be regretted that no record of this great argument is in existence. Some portions of it, however, were reported at the time for the journals of the day, from which a very correct idea can be formed of the magnificent whole.

After a comparative brief deliberation, the jury rendered a verdict of "Not guilty," a verdict which, to use the language of another, "has been generally acquiesced in by the legal profession as the only one which the evidence would warrant." The general public, however, took another view of it, believing that the evidence in the case was sufficient to convict Tirrell; that it was Rufus Choate—his overmastering eloquence, his matchless influence over the jury, and the plastic skill in turning the evidence to the advantage of his client, and not his innocence, that gave Tirrell his liberty. Although he was acquitted on the charge of murder, he was in January, 1847, brought to trial for arson, in the first degree. This trial, though less celebrated than the first, was equally important and difficult. But Choate entered on the defense of his client with the confidence and strength of a victorious champion, and although superhuman efforts were made to convict him by the attorney-general and his associates, Choate once more listened to the words "Not guilty" as they fell from the lips of the foreman of the jury before whom his client was tried.

"It was afterward wittily said," says the great advocate's biographer, "that Tirrell existed only by the sufferance of Choate."

It is said that not long after the conclusion of the

second trial Tirrell wrote Choate, suggesting that half the fee he had paid him for defending him should be returned, "because you know, Mr. Choate, that my innocence of the crime charged against me was so obvious that two juries acquitted me after very short deliberations, and that I have paid you a sum of two hundred dollars, which is too much by half for conducting such simple and easy causes."

Mr. Choate replied in his characteristic manner "that he was saved from the gallows by the strongest effort he had ever made in behalf of a criminal, and that three-fourths of the community believed him guilty; that one strong evidence of his guilt was his attempt to cheat his lawyer out of a fee which should at least have been five times as large."

There is a singular analogy between Choate's defense of Tirrell and that of Ogden Hoffman's defense of Richard P. Robinson, tried for the murder of Helen Jewett in New York in 1836. There is also a most singular analogy between the relation of Robinson with Miss Jewett and that of Tirrell and Mrs. Bickford. Both of these women were beautiful and fascinating; both were paramours of their alleged murderers; both men were at the house where the deeds were committed the night before; there was a similarity in the manner in which their deaths were produced; an effort was made to burn both houses after the commission of the crime; and the public coincided in the belief that both men were guilty. But they were both acquitted by a singularly successful defense, defenses which lost nothing of their brilliancy when compared with the most splendid efforts of Burke,

Erskine, Curran, Sheridan, Webster, Wirt or Thomas Addis Emmett.

Mr. Choate's argument in the Oliver Smith will case ranks among his most splendid efforts among his civil actions, overshadowing the powerful argument of his illustrious opponent.

Edmund Burke was Mr. Choate's ideal of a lawyer, writer, statesman and orator. He once asked in a letter to Charles Sumner, "What coxcombical rascal is it who thinks Bacon, Bolingbroke, Milton, or any other Englishman, a better writer than Burke? Take page by page the allusions, the felicities, the immortalities of truth, variety, reason, height, depth, everything, and Bolingbroke at least is a voluble prater compared to Burke. Indeed, out of Burke might be cut fifty Mackintoshes, one hundred and fifty Macaulays, forty Jeffries, two hundred and fifty Sir Robert Peels, and then leave him greater than Pitt and Fox together."

As was said of Alvan Stewart, Choate's rare humor seemed at times to interpenetrate all his thoughts. There were springs of great pathos in him, a power of touching the sensibilities, a brilliant fancy easily called to his aid that illuminated his pathway through the driest details of fact and law, a mastery of the philosophy of his subject, a grand and sweeping style which bore both judge and jury along as on the current of a river.

Mr. Choate's pleasantry never deserted him; it was always with him, in victory or in defeat. "It was a safeguard against depression and discouragement. It was never misunderstood for a moment by those who

knew him ; with it he lightened the disappointment and despondency of others beaten in lawsuits."

One morning he received a note from a lawyer associated with him in the argument of a cause at Washington, informing him that the court had decided against them ; he immediately wrote back as follows :

DEAR SIR :—The court has lost its little wits. Please let me have, 1st. Our brief (for the law) ; 2nd, The defendant's brief (for the sophistry); 3d, The opinion (for the foolishness), and never say die. R. C.

We have considered Mr. Choate only as the lawyer and his relations to the jury and to the courts, without any extended reference to his splendid genius as a *litterateur*, his unsurpassed strength and logical depth as a writer, his chaste imagination, his lively but well-disciplined fancy, his acquirements as a scholar, and his profundity and tact as a parliamentary debater. There is one characteristic, however, to which we wish to refer —his hatred of all snobbish pretension and all ostentatious, purse-proud display. This we shall illustrate by the following characteristic anecdote :

A southerner of this class, of considerable wealth, and more self-importance, of the name of Brainsteed, once visited Boston, stopping at the Revere House. In consideration of his wealth and his relation to southern chivalry, the proprietors gave him the most obsequious attention, assigning him, as an especial attendant, a favorite negro servant, who had long been in their employ. The southerner, who was a slaveholder, had a great dislike to free negroes, and notwithstanding the gentlemanly bearing of his attendant, he treated him with the

utmost insolence, contempt and abuse, which the negro bore with becoming patience for a long time. But at length, the irritating manner of his temporary master began to exhaust his patience, and finally upon one occasion, when Brainsteed had been more than usually abusive, the negro turned on him with great vehemence, exclaiming, "O, you go to hell!" "What did you say, you black rascal?" roared B. "I told you to go to hell, and you may," said the darkey, as he rushed from the room.

This was too much for this proud scion of southern aristocracy to bear. Hastening to the office, he made a bitter complaint to the proprietor, and was coolly told that he did not blame the negro. This greatly enhanced his rage, and rushing into the street, he inquired of a citizen whom he met for the best lawyer in the city of Boston. He was directed to Rufus Choate. Hastening to the office of the great lawyer, whom he found at his table busily engaged over a brief: "Is Mr. Choate in?" asked the southerner.

"That's my name, sir," said Mr. Choate, as he gave the man one of his keen, searching glances, which put him in possession—as by intuition—of the kind of man who stood before him.

"Well, Mr. Choate," said Brainsteed, "I desire to consult you, sir, on a very important case."

"Go on, sir; go on," said Mr. Choate.

"The case is this, sir: My name is Brainsteed, sir, of Richmond, Virginia. It is proper that I should say, sir, that I am a—a—a—"

"A representative of southern chivalry," said Mr. Choate.

"Well—y-es, sir, you may perhaps say so, with propriety. I am visiting Boston on business, and am a guest of the Revere House. As none of my servants are with me, the proprietors, knowing something who I am, assigned me what they call a first-class, free nigger servant, but in reality an impudent, saucy whelp, that I would have, if I owned him, severely lashed every day till I broke him of his viciousness. This morning, as I was reprimanding him for his impudence, he turned on me with still more impudence, and what do you think he said, sir? Why, sir, he told me 'to go to hell.' Now this is unendurable. There is no nigger in the south who would dare say this to James Brainsteed, and what is worse, the proprietor of the hotel upholds this nigger in his insolence. Now I won't bear this; I'll teach them a lesson; I'll have legal redress, and I want your opinion, Mr. Choate, as to what I shall do about it."

Choate gave his client another of those peculiar looks, which distinguished him when moved by some mental action.

"Mr. Brainsteed," he said, "I think I understand you and your case. It is, of course, important for you to know what you shall do. There is no law, Mr. Brainsteed, in the commonwealth of Massachusetts that will allow that negro to send you to hell, and I advise you by all means not to go."

Then taking up his pen, he continued writing as if nothing had happened. Brainsteed stood for a few moments somewhat embarrassed, tapping his boot with a small cane, quite under the impression that Choate had handed him up, but unable by the coolness of the lawyer's manner to make any reply. At length, as he was about leaving the room, he asked:

"What is your fee, sir, for this advice?"

"Ten dollars, sir. The case is very important, indeed," said Choate, without looking up from his brief.

The man laid two fives on the table, remarking:

"I don't know which is the worst place to get into—hell or a Boston lawyer's office."

"You don't think the charge exorbitant, do you? It cannot be possible."

"It is exorbitant, sir. It's robbery, sir."

"You are quite mistaken, Mr.—Mr.—Mr. Brainsteed. The charge is very light for one so important. If you act upon my advice it will save you from a terrible calamity," said Choate, still continuing his writing.

"What misfortune—what do you mean, sir?"

Choate wrote on a few moments, and said: "From your general appearance, if you had not been ably advised in this case, you would have done as that negro told you and gone to hell, where you would have found another rich fool. Good morning, Mr. Brainsteed," and that gentleman retired.

Mr. Choate disliked personal communication with clients in criminal cases. It is said that with Tirrell—for whom, as we have seen, he made a defense of unsurpassing power and brilliancy—he never exchanged a word till the day of the trial; and then, only a few brief sentences as follows: Walking up to the railing of the dock where the prisoner sat, he said to him:

"Well, sir, are you ready to make a strong push with me for your life, to-day?"

"Yes, sir," was the reply, "but you are the one to make the push—my life depends upon you; but I'll do what I can for myself."

"Very well, sir," replied Mr. Choate, "we will make

it." Turning away, he took his seat, and never spoke to him again.

Ogden Hoffman and James T. Brady, however, repeatedly sought interviews with the great criminals they defended ; and in this, they followed the example of Curran, who used to say : "I always talk with a criminal I am to defend until I learn every secret of his heart and make myself familiar with his nature."

Mr. Choate's assistants always prepared his cases for trial for him, and through them he learned everything connected with the lives of his clients in criminal cases.

There was much in the personal appearance of Rufus Choate that attracted attention. The following is the best description, perhaps, that can be found of him :

"He was a little more than six feet in height ; his frame robust, strong and erect ; his walk rapid, yet easy and graceful, and with a force, too, that seemed to bear onward not only himself, but all about him ; his head was covered with a profusion of black, curling hair, to the last with but a slight sprinkle of gray ; his eye was dark, large, and, when quiet, an introverted meditative, dreamy expression ; when aroused or interested it gleamed and was very powerful.

"A woman, famous as a fortune-teller, once came to consult him. She had not proceeded far in her story before she suddenly broke off with the exclamation : 'Take them eyes off me, Mr. Choate ; take them piercing —I was going to say, witch eyes—off of me, or I can't go on.'

"His smile was fascinating, and his whole manner marked with easy dignity and grace."